

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

HG

Date: DEC 28 2012

Office: BALTIMORE, MD

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182 (a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

The applicant is a native and citizen of El Salvador who is seeking a waiver of inadmissibility to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year with intentions of departing the United States to apply for an immigrant visa in El Salvador. He seeks an advance waiver of inadmissibility in order to be able to immigrate to the United States after he pursues his visa application at the U.S. Embassy in San Salvador, El Salvador.

The District Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to his qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated January 21, 2011.

On appeal, the applicant's attorney asserts that sufficient evidence exists in the record to demonstrate that the qualifying spouse will experience extreme hardship if the waiver application is denied.

The record contains the Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs from the applicant's attorney; medical documentation regarding the qualifying spouse's mother; letters from the qualifying spouse, her parents, her siblings and her friend; relationship and identification documents for the applicant, qualifying spouse and their child; financial documentation; photographs and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record indicates that the applicant entered the United States on May 10, 1998 without inspection and has not departed. According to section 212(a)(9)(B)(i)(II) of the Act, the applicant will not become inadmissible for accumulating over one year of unlawful presence until he departs the United States. The applicant cannot receive an advance waiver for unlawful presence before his departure. Further, upon his departure, U.S. consular officers at the embassy in El Salvador have jurisdiction to determine his inadmissibility.

Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Therefore, the Form I-601 is unnecessary. Having found that the applicant does not need the waiver, no purpose would be served in discussing whether he has established extreme hardship to his U.S. citizen spouse. Accordingly, the appeal will be dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

**ORDER:** The appeal is dismissed as the underlying waiver application is unnecessary.