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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

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DATE: **JAN 06 2012** Office: NEW YORK, NY File:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Bulgaria. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 9, 2009.

On appeal, counsel the applicant states that the director's decision was in error for citing 212(a)(6)(C)(i) as a basis of inadmissibility, and that the applicant's spouse would suffer a range of impacts which are sufficient to meet the extreme hardship standard. *Form I-290B*, received on May 29, 2009.

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

(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.

....

Upon examination of the record the AAO determines that there is no basis to consider the applicant inadmissible under section 212(a)(9)(B)(i)(II). The record indicates that the applicant was admitted to the United States as a J-1 exchange visitor on June 28, 1999. The record further reflects that applicant was admitted for duration of status ("D/S") and that his J-1 program ended on or about October 29, 1999. The applicant remained in the United States beyond the date that his J-1 program ended. Although the applicant violated his J-1 status by remaining in the United States beyond the date that his J-1 program ended, he did not begin to accrue unlawful presence on that date. Rather, for a nonimmigrant admitted for duration of status, unlawful presence will accrue as follows:

If USCIS finds a nonimmigrant status violation while adjudicating a request for an immigration benefit, unlawful presence will begin to accrue on the day after the request is

denied. If an immigration judge makes a determination of nonimmigrant status violation in exclusion, deportation, or removal proceedings, unlawful presence begins to accrue the day after the immigration judge's order. It must be emphasized that the accrual of unlawful presence neither begins on the date that a status violation occurs, nor on the day on which removal proceedings are initiated.

USCIS Memorandum, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009. The applicant filed a Form I-485 on April 10, 2008, and subsequently departed the United States. The applicant was paroled back into the United States on September 22, 2008. The record does not indicate that the applicant was found to have violated his J-1 exchange visitor status before his departure in 2008. Therefore, the record does not reflect that the applicant accrued unlawful presence prior to his departure in 2008.

Because the record does not reflect that the applicant accrued unlawful presence prior to his departure in 2008, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(B) of the Act.

As the applicant is not inadmissible under section 212(a)(9)(B)(i) of the Act, he is not required to file a waiver under section 212(a)(9)(B)(v) of the Act. As such, the waiver application is moot. The appeal will be dismissed.

ORDER: The appeal is dismissed as the waiver application is moot.