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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

H6

DATE: **JAN 10 2012**

OFFICE: LATHAM, NEW YORK

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Maria F. Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Albany, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the prior decision of the Field Office Director will be withdrawn, and the application for a waiver of inadmissibility declared moot¹.

The record establishes that the applicant is a native and citizen of Yemen who entered the United States on October 22, 1996, with a B2 visitor visa authorizing the applicant to remain in the United States until April 27, 1997. The applicant attained the age of eighteen on December 1, 2003. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on August 30, 2004. The applicant subsequently departed the United States and was admitted to Yemen on April 4, 2007. On October 27, 2007, the applicant was paroled into the United States to resume adjudication of his Form I-485 application. The applicant accrued unlawful presence in the United States from December 1, 2003 to August 30, 2004. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 9, 2009.

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

Aliens Unlawfully Present.-

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

.....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and

¹ The applicant noted on his Form I-290B that he wished to appeal both his Form I-601 and Form I-485 decisions. However, an applicant can only appeal one decision with a Form I-290B. Additionally, the denial of the Form I-485 may not be appealed to the AAO.

again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the Attorney General (Secretary) 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...

As noted above, the applicant accrued unlawful presence from December 1, 2003 until he filed his Form I-485, on August 30, 2004. The applicant was, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for more 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure.

As the record establishes, the applicant's last departure occurred in April 2007. It has now been more than three years since the departure that made the applicant inadmissible. A clear reading of the law reveals that the applicant is no longer inadmissible pursuant to section 212(a)(9)(B) of the Act.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.