

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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**



H6



Date: **JUL 10 2012**

Office: NEW DELHI, INDIA

FILE: 

IN RE: Applicant: 

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and children in the United States.

The field office director found that an immigration judge concluded that the applicant is permanently ineligible for any benefits under the Act pursuant to section 208(d)(6) of the Act for filing a frivolous application for asylum. In addition, the field office director found that the applicant's Form I-130 was revoked. The field office director denied the waiver application accordingly. *Decision of the Field Office Director*, dated May 17, 2011.

On appeal, the applicant contends he did not commit fraud or misrepresentation regarding his asylum claim. The applicant contends his wife and their three U.S. citizen children live in the United States and he should be allowed to return to the United States.

Section 208(d)(6) of the Act states:

If the Attorney General [Secretary of Homeland Security] determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

In this case, the record shows that on May 29, 2001, an immigration judge found that the applicant filed a frivolous asylum application. According to the immigration judge, because the applicant knowingly filed a frivolous application for asylum, he is barred from ever receiving any relief under the Act. *Oral Decision of the Immigration Judge*, dated May 29, 2001. The record further shows that the applicant appealed this decision to the Board of Immigration Appeals (BIA) which summarily affirmed the immigration judge's decision on March 5, 2003. *Decision of the Board of Immigration Appeals*, dated March 5, 2003. In addition, the record shows that the applicant filed a petition for review with the Court of Appeals for the Ninth Circuit. The Court upheld the BIA's decision, specifically finding that the applicant was warned of the consequences of filing a frivolous asylum application, was given numerous opportunities to explain material discrepancies, and engaged in a pattern of providing non-responsive or contradictory answers. *Singh v. Gonzalez*, 163 Fed.Appx. 458 (9<sup>th</sup> Cir. 2005) (unpublished).

Therefore, the record shows that pursuant to section 208(d)(6) of the Act, the applicant is barred from ever receiving any benefits under the Act. The applicant's unsupported assertion that he did

not commit fraud or misrepresentation regarding his asylum claim has already been rejected by the BIA and the Court of Appeals for the Ninth Circuit and will not be disturbed here.

Moreover, the record shows that the approved Form I-130 filed on the applicant's behalf was revoked on September 23, 2010. In the absence of an approved Form I-130, the applicant is not entitled to apply for an immigrant visa, and his visa cannot be approved regardless of whether he is admissible or, if not, whether a waiver is available for any ground of inadmissibility. Therefore, the waiver application is moot and the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.