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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H6

DATE: MAY 17 2012 OFFICE: LIMA, PERU

[redacted]

IN RE: APPLICANT: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is unnecessary.

The applicant is a native and citizen of Brazil who was found to be inadmissible 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 and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen fiancée.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative in the scenario of separation and denied the application accordingly. *See Decision of Field Office Director* dated March 10, 2010.

It is noted that counsel for the applicant, [redacted] has been disbarred from the practice of law in Massachusetts and has also been suspended from practice before USCIS. As such, the AAO will consider the applicant as self-represented.

On appeal, former counsel indicates that the Field Office Director failed to consider all the factors in the aggregate with respect to separation. Former counsel explains that the emotional and financial impact of separation, especially given the qualifying relative's age, amounts to extreme hardship.

The record includes, but is not limited to, evidence of birth, marriage, divorce, residence, and citizenship, documentation of removal proceedings, statements from the applicant and her fiancée, and other applications and petitions filed on behalf of the applicant. 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.-
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> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
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> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in

> the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
>
> . . . .
>
> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant was admitted to the United States on August 14, 1999, pursuant to a nonimmigrant visa, and was authorized to remain until February 13, 2000. The applicant remained past that date, admitted in a sworn statement that she worked without authorization, and departed the United States on September 7, 2001. On December 4, 2001 she attempted to gain admission to the United States pursuant to a nonimmigrant visa, but due to her previous unlawful presence she was denied admission and ordered removed under section 213(b)(1) of the Act, 8 U.S.C. §1225(b)(1). The applicant's departure was verified on that same day, and she has remained outside the United States since then.

The applicant's last departure from the United States occurred more than 10 years ago. She is therefore no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and consequently a waiver under section 212(a)(9)(B)(v) of the Act is not necessary. It is also noted that the applicant is no longer inadmissible under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) because her removal under section 235(b)(1) of the Act occurred over five years ago. 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.