

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



U.S. Citizenship  
and Immigration  
Services

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DATE: NOV 09 2012

Office: NEW YORK, NY

FILE: [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:

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,

A handwritten signature in black ink, appearing to be "Perry Rhew", with a long horizontal line extending to the right.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.

The applicant is a native and citizen of Belarus 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. relatives.

The District Director concluded that applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated August 28, 2009.

Section 212(a)(9) of the Act provides:

**(B) 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 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.

The record reflects that the applicant entered the United States as a J-1 educational exchange visitor, with authorization to remain for duration of status (D/S). The applicant's participation in the program ended in November 1999, though she remained until she departed the United States in March 2007. Based on this, the District Director found the applicant inadmissible for a period of unlawful presence from November 1999, until November 26, 2006, when the applicant filed an adjustment of status application.

The record includes the applicant's Form I-94 entry card. It denotes that the applicant was inspected and admitted on June 29, 1999, as a J-1 Student with an authorized stay of Duration of Status. Unlawful presence will begin to accrue for someone admitted for Duration of Status only

upon the formal finding of an Immigration Judge or of the Board of Immigration Appeals (BIA) that this person has violated her status and will begin to accrue unlawful presence. In this case, the record does not contain any such formal finding.

The AAO notes that the applicant filed a Form I-485 application to adjust her status to lawful permanent resident on November 30, 2006, and she did not accrue unlawful presence while having a bona fide adjustment application pending. Her departure and re-entry into the United States occurred in 2007, subsequent to the filing of her Form I-485, and she had not accrued unlawful presence prior to that departure. Based on the foregoing, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. 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.