

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 **SEP 17 2012** Office: NEWARK, NEW JERSEY FILE:

IN RE: Applicant:

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.

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Senegal and a citizen of France 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 one year or more and seeking readmission within ten years of his last departure from the United States. The applicant does not contest this finding of inadmissibility. The applicant was also found to be inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), due to being previously removed. The applicant contests this ground of inadmissibility. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The field office director concluded that the applicant had failed to establish that he has a qualifying relative whose hardship may serve as a basis for a waiver under section 212(a)(9)(B)(v) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 11, 2009.

On appeal, the applicant asserts that he was not removed from the United States and he details the hardship that he is experiencing. *Form I-290B*, received June 19, 2009.

The record includes, but is not limited to, the applicant's statements, a statement from one who asserts that she is his religious wife and a copy of his plane ticket. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States under the Visa Waiver Program on November 21, 1996, his authorized period of stay expired on February 20, 1997, he was placed in removal proceedings, he was granted voluntary departure from March 17, 2000 until July 17, 2000, he departed the United States on July 18, 2000 and he reentered the United States under the Visa Waiver Program on October 13, 2001. The applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions under the Act, until March 17, 2000, the date he was granted voluntary departure. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present for a period of one year or more and seeking readmission within ten years of his July 18, 2000 departure from the United States.

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

(B) Aliens Unlawfully Present.-

- (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.

....

(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 [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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. The record includes a letter from a woman who claims that she is spiritually married to the applicant and she indicates that she plans to legally marry him soon. However, as the applicant is not legally married to her and she has not established that she is either a U.S. citizen or a lawful permanent resident, she cannot be considered a qualifying relative for a section 212(a)(9)(B)(v) waiver application. There is no evidence that the applicant has any other qualifying relatives. Therefore, the applicant is not eligible for a section 212(a)(9)(B)(v) waiver.<sup>1</sup>

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

---

<sup>1</sup> The AAO notes that the Field Office Director found that the applicant departed the United States on June 18, 2000, one day after his grant of voluntary departure expired. This finding indicates that the applicant was under a removal order when he departed the United States on June 18, 2000 and is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act. The applicant asserts that his departure flight was on June 17, 2000 at 7 PM, but the plane ticket was issued based on the time in France, which is six hours ahead of U.S. time, and therefore it lists June 18, 2000. The copies of the ticket provided does not clearly list a departure date, and the applicant has not submitted sufficient evidence to establish that he in fact departed the United States on or before June 17, 2000. Therefore, the record does not settle whether the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, and he may require an approved Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, in order to establish admissibility to the United States.



Page 4

**ORDER:** The appeal is dismissed.