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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

Date: **APR 02 2013**

Office: ACCRA, GHANA

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:

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.

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 with the field office or service center that originally decided your case by filing a 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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria 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 ten years of his last departure from the United States, and pursuant to section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), due to a reason to believe he has been involved in drug trafficking. The applicant's spouse and child are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director concluded that the applicant failed to establish extreme hardship on a qualifying relative and there is no waiver for inadmissibility under section 212(a)(2)(C)(i) of the Act, and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 28, 2011.

On appeal, the applicant details hardship to his spouse. *Form I-290B*, dated December 22, 2007.

The record includes, but is not limited to, statements from the applicant, supporting statements and criminal records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection on or around March 28, 1992; he filed Form I-589, Request for Asylum in the United States, on January 24, 1994; his application was denied in immigration court and he was ordered removed on August 3, 2000; and on December 15, 2004 he was removed from the United States. The applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions under the Act, until December 15, 2004, the date he was removed from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his December 15, 2004 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.

The applicant states that he has not been involved in drug trafficking. However, given that there is no accompanying inadmissibility under section 212(a)(2)(A) of the Act for a controlled substance violation, and no waiver available for inadmissibility under section 212(a)(2)(C) for drug trafficking, we are not convinced that this issue is even not within the scope of a Form I-601 adjudication. Regardless, the record shows that the consular officer based the finding of inadmissibility under section 212(a)(2)(C) on credible information reflecting that the applicant acted as a heroin distributor in 2004.

Section 212(a)(2)(C)(i) of the Act states:

Any alien who the consular officer or the Attorney General [now Secretary] knows or has reason to believe

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so...is inadmissible.

As stated, no waiver is available for section 212(a)(2)(C) inadmissibility. Therefore, as the applicant is statutorily ineligible for a waiver of inadmissibility pursuant to section 212(a)(2)(C) of the Act, we find no that no purpose would be served in discussing eligibility for a waiver of his inadmissibility under section 212(a)(9)(B)(v). Accordingly, the appeal will be dismissed in the exercise of discretion.

**ORDER:** The appeal is dismissed.