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

(b)(6)

DATE: FEB 12 2013 OFFICE: NEW YORK (HOLTSVILLE) FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) and of the Immigration and Nationality 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,

Ron Rosenberg
Acting 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 unnecessary.

The applicant is a native and citizen of Haiti. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). She was not found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the country for more than one year and seeking readmission within ten years of her departure from the United States.

The District Director concluded that the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act because she never departed the United States. *See Decision of District Director,* dated May 26, 2011.

On appeal, counsel asserts that the applicant is eligible to adjust her status to that of lawful permanent resident as a derivative beneficiary of a petition filed by the applicant's sister for the applicant's mother prior to April 30, 2001. Counsel contends that he is waiting for a reply to a Freedom of Information Act request and will submit more proof. *See Form I-290B, Notice of Appeal or Motion*, received June 28, 2011.

The record contains but is not limited to: Form I-290B; Form I-601, Application for Waiver of Grounds of Inadmissibility; Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-821, Application for Temporary Protected Status; and birth, marriage and naturalization certificates. The entire record was reviewed and considered in rendering this decision on the appeal.

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-
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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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> . . . .
>
> (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 Attorney General (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 record reflects that the applicant entered the United States without inspection on or about November 17, 2001 and has not left the United States. She is therefore not inadmissible under 212(a)(9)(B)(i)(II) of the Act, as she never left and sought readmission into the United States. Her application to adjust status to that of a lawful permanent resident was denied based partly on her entry without inspection and not meeting the requirements for section 245(i) of the Act, 8 U.S.C. § 1255(i).

Accordingly, based on the record as currently constituted, the AAO concurs with the District Director that the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The waiver application filed pursuant to section 212(a)(9)(B)(v) of the Act is therefore unnecessary as the applicant is not inadmissible.

ORDER: The applicant's appeal is dismissed as the waiver application is unnecessary.