



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: FEB 26 2013

OFFICE: LOS ANGELES, CA

FILE: [Redacted]

IN RE:

[Redacted]

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

[Redacted]

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the country without admission or parole. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility in order to live in the United States with his wife and child.

In a decision dated September 9, 2011, the director determined that no waiver was available for the applicant's ground of inadmissibility under section 212(a)(6)(A)(i) of the Act and that the applicant provided no evidence that he is eligible to adjust his status to that of lawful permanent resident under any provision of law. The applicant's Form I-601 waiver application was denied accordingly.

On appeal the applicant concedes, through counsel, that he is inadmissible for having entered the United States without being admitted or paroled. Counsel asserts however, that the applicant also is inadmissible for his unlawful presence, as set forth in section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i). Counsel asserts further that requiring the applicant to depart from the United States before finding him eligible to seek a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), would be contrary to congressional intent.

Counsel asserts that the applicant's U.S. citizen wife would experience extreme hardship if the applicant is denied admission into the United States, and that the Form I-601 should therefore be approved.

The record includes evidence of the applicant's presence in the United States, affidavits from the applicant's wife, medical and psychological documentation, and financial information. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(A)(i) of the Act provides in pertinent part:

(6) Illegal entrants and immigration violators.-

(A) Aliens Present without admission or parole.-

(i) In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General [now Secretary, Department of Homeland Security "Secretary"], is inadmissible.

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Under section 212(a)(9)(B)(i) of the Act:

(i) [A]ny 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.

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

(v) Waiver - The [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 record contains two AAO decisions to support counsel's assertion that inadmissibility under section 212(a)(6)(A)(i) of the Act may be waived by section 212(a)(9)(B)(v) of the Act. The AAO notes first that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The submitted decisions are unpublished and not designated as precedent decisions. The findings made in the decisions, therefore, have no binding precedential value for purposes of the applicant's case. The AAO notes further that the AAO decisions in the record pertain solely to section 212(a)(9)(B)(i) of the Act, based on the respective aliens' departures from the United States after more than one year of unlawful presence in the country. The decisions do not discuss or pertain to section 212(a)(6)(A)(i) of the Act.

Moreover, counsel's argument that failing to extend the waiver provisions of section 212(a)(9)(B)(v) to the inadmissibility under section 212(a)(6)(A)(i) is contrary to congressional intent is undermined by the statute's plain language. The statutory language of section 212(a)(9)(B)(v) of the Act clearly reflects that the provision is limited to inadmissibility grounds set forth in section 212(a)(9)(B)(i) of the Act, by referring only to a waiver under "clause (i)" of that section of the Act. Furthermore, section 212(a)(9)(B)(i)(II) of the Act specifically refers to the inadmissibility arising after the "alien's departure or removal"; the applicant in the present matter has neither departed nor been removed. The applicant has been found inadmissible under section 212(a)(6)(A)(i) of the Act. Section 212(a)(9)(B)(v) of the Act does not apply to the applicant's case.

Regulations at 8 C.F.R. § 212.7(a) and (b) provide that individuals seeking adjustment of status may use Form I-601 to file for waivers of inadmissibility under sections 212(g), (h), (i) and certain

parts of section 212(a) of the Act. The regulation does not authorize the use of a Form I-601 waiver when an applicant for adjustment of status is inadmissible under section 212(a)(6)(A)(i) of the Act. Accordingly, the applicant may not seek a waiver of his ground of inadmissibility by filing the Form I-601 waiver application.

In proceedings for an application for waiver of grounds of inadmissibility under the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.