

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: JAN 29 2013

OFFICE: OAKLAND PARK, FL

IN RE:

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)

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 cursive script that reads "Michael Shumway".

f. Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

The applicant is a native and citizen of Brazil 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 admission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen and is the father and stepfather of three U.S. citizens. He seeks a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated February 10, 2010.

On appeal, counsel contends that the applicant is no longer inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act as more than ten years have passed since he last departed the United States. She alternately asserts that the applicant has submitted sufficient evidence to establish that his inadmissibility would result in extreme hardship for his spouse. *Form I-290B, Notice of Appeal or Motion*, dated March 9, 2010.

The evidence of record includes, but is not limited to: statements from the applicant, his spouse and his oldest daughter; statements from friends of the applicant; a medical statement relating to the applicant's spouse; credit card bills; bank statements; an earnings statement for the applicant; a tax return and a W-2 Wage and Tax Statement for the applicant's spouse; a curriculum vitae for the applicant's spouse; and a copy of the applicant's spouse's Master of Science degree in Psychology from Florida International University. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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

(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 . . . prior to the commencement of proceedings . . . 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 applicant entered the United States as a B-2 nonimmigrant visitor on November 24, 1993, with authorization to remain until May 23, 1994. The applicant did not depart the United States when his B-2 visa expired. Although the applicant indicates on the Form I-601 that he resided in the United States from the time of his 1993 entry until December 30, 1999, the passport he used to return to the United States on February 4, 2000 contains a multiple-entry U.S. visa issued to the applicant on October 23, 1997 by the U.S. consulate in Sao Paulo, Brazil. Therefore, the applicant's initial departure from the United States occurred on a date prior to October 23, 1997. The record also reflects that while the applicant was most recently admitted to the United States on February 4, 2000, he had previously entered the United States on an unknown date but prior to July 22, 1999, when court records indicate that he was charged with a local traffic violation in Arizona.

Based on this history, the AAO is unable to ascertain the period or periods of the applicant's unlawful presence, or to conclude that the applicant's admission to the United States is barred under either prong of section 212(a)(9)(B)(i) of the Act. Accordingly, the AAO remands the matter for the field office director to reevaluate the applicant's inadmissibility, to determine the applicant's periods of unlawful presence and whether the applicant is inadmissible. We note that the applicant has the burden of proving he is not inadmissible to the United States. If the field office director determines that the applicant is inadmissible, the field office director will issue a new Form I-601 decision which will specify the period or periods of unlawful presence in addition to addressing the merits of the applicant's waiver application. If that decision is adverse to the applicant, it shall be certified for review to the AAO.

ORDER: The matter is remanded to the field office director for further action consistent with this decision.