



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 31 2013** Office: ACCRA, GHANA

IN RE: Applicant:

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:

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 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 Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 her last departure from the United States. The applicant is the mother of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to 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 with her daughter and grandchildren.

The Field Office Director found that the applicant had failed to establish that she has a qualifying relative 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 December 1, 2011.

On appeal, the applicant's daughter states she needs the applicant's assistance in helping to care for her four children, one of whom is severely handicapped. *Applicant's daughter's statement, attached to Form I-290B, Notice of Appeal or Motion*, dated December 29, 2011.

The record includes, but is not limited to, statements from the applicant and her daughter, and medical documents for the applicant's granddaughter. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) 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 [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

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immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that in June 2002, the applicant entered the United States with authorization to remain until December 7, 2002. The applicant departed the United States on July 23, 2005. The applicant accrued over one year of unlawful presence between December 8, 2002, and July 23, 2005. The applicant is, therefore, 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 she seeks admission within 10 years of her departure from the United States. The applicant does not contest her inadmissibility.

Because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, she must demonstrate eligibility for a waiver under section 212(a)(9)(B)(v). A section 212(a)(9)(B)(v) waiver is dependent first upon a showing that the applicant is the spouse, son, or daughter of a U.S. citizen or lawful permanent resident of the United States. On May 27, 2008, the applicant's U.S. citizen daughter filed a Form I-130 on behalf of the applicant, which was approved on December 1, 2008. The applicant's U.S. citizen daughter, however, is not a qualifying family member under section 212(a)(9)(B)(v) of the Act. The record does not establish that the applicant has a qualifying family member required for a waiver. As the applicant is ineligible for waiver consideration under section 212(a)(9)(B)(v) of the Act, the appeal must be dismissed.

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 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.