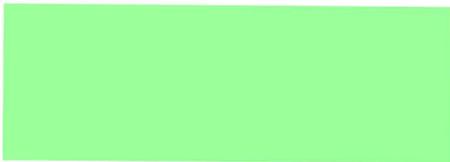


(b)(6)

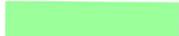


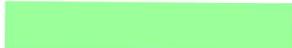
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: **JUN 18 2013**

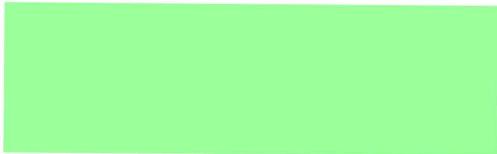
Office: NEW DELHI, INDIA

FILE: 

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) and Permission to Reapply for Admission into the United States After Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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,


fr

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the field office director will be withdrawn and the application declared unnecessary. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to 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 United States for more than one year. 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 with his U.S. citizen spouse and lawful permanent resident parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application for a waiver pursuant to section 212(a)(9)(B)(v) of the Act. *Decision of the Field Office Director*, dated April 25, 2012.

On appeal counsel for the applicant asserts the applicant's parents are financially and emotionally dependent on the applicant and that it has now been more than five years since the applicant was removed from the United States. The entire record was reviewed and considered in rendering this decision.

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

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 (whether or not pursuant to section 244(3)) prior to commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure 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.

....

(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 indicates that the applicant entered the United States without inspection in 1988 and departed in August 2001, thus accruing more than one year of unlawful presence after the April 1, 1997 effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), until he submitted Form I-485, Application to Adjust Status, on April 30, 2001. The applicant was 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 one year or more. It has now been more than 10 years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible.

The record further reflects that the applicant attempted to enter the United States again in March 2002 with Advance Parole as an applicant for adjustment of status, but was denied admission and placed in removal proceedings because it was suspected that his marriage to a U.S. Citizen upon which his application for adjustment of status was based was fraudulent.¹ He was removed in January 2003 at the end of proceedings under section 240 of the Act initiated upon his arrival in the United, thus rendering him inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i).

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

Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.-Any alien not described in clause (i) who-

¹ The applicant was charged with inadmissibility under section 212(a)(9)(B)(i)(II), section 212(a)(7)(A)(i)(I) as an immigrant without an immigrant visa, and section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit through fraud or misrepresentation, but the charge under section 212(a)(6)(C)(i) was not sustained by the immigration judge.

- (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record contains a Form I-212 Application for Permission to Reapply for Admission After Removal (Form I-212) that was denied by the field office director as a matter of discretion. Form I-212 is no longer necessary as it has been more than five years since the applicant's removal and he is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the applications for waiver of inadmissibility and permission to reapply for admission are declared unnecessary.