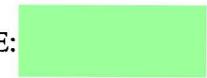


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



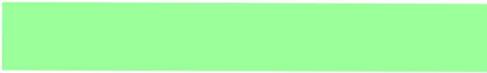
U.S. Citizenship
and Immigration
Services



DATE: **MAY 21 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE:

IN RE:



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

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala 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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The Service Center Director concluded that the applicant did not have a qualifying relative with which to obtain a waiver of inadmissibility and denied the application accordingly. *See Decision of Director* dated August 8, 2012.

On appeal, the applicant's employer submits copies of the applicant's immigration-related documents as well as a letter. In the letter, the employer requests that USCIS reduce the ten year bar against the applicant by nine years so he can return to employment. The employer additionally states that the applicant has been a model employee, and has conducted himself as any hard working, law abiding citizen.

The record includes, but is not limited to, the documents listed above, other applications and petitions, and documentation of immigration proceedings. The entire record was reviewed and considered in rendering 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant admitted in an immigration interview that he entered the United States without inspection in June 1998, and returned to Mexico in August 2011. On August 20, 2004 he submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. This application was denied on January 18, 2008. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009.* Although the applicant did not accrue unlawful presence while his I-485 application was pending, he accrued unlawful presence from June 1998 until August 20, 2004, the date his I-485 application was filed, and from the date the I-485 application was denied until his departure in August 2011. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and requires a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

The applicant indicates on his Form I-601 application that he does not have a qualifying relative for purposes of this waiver. The AAO notes that for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, an applicant must demonstrate extreme hardship to a U.S. Citizen or lawful permanent resident parent or spouse. In the present case, the applicant has not shown that he has a qualifying relative for a waiver. Without a qualifying relative, the AAO cannot find that the applicant qualifies for a waiver under section 212(a)(9)(B)(v) of the Act. Furthermore, without a qualifying relative, USCIS has no legal means with which to waive any portion of the applicant's ten year bar as the applicant's employer requests. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for a 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. 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.