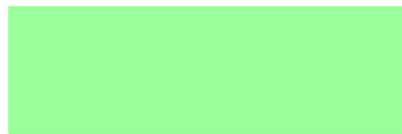




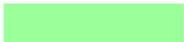
U.S. Citizenship
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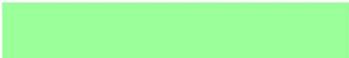


DATE: **SEP 23 2013**

OFFICE: KANSAS CITY, MISSOURI

File: 

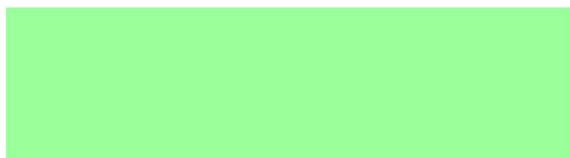
IN RE:

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)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Kansas City, Missouri denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and citizen of Pakistan 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 his last departure from the United States. The record indicates that the applicant is the spouse 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.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated May 19, 2011.

On appeal counsel asserts that the field office director failed to consider the extreme hardship the applicant's spouse and her son will face if the applicant is found inadmissible. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received May 24, 2011. Counsel further indicates on the Form I-290B, by checking box B at Part 2, that a brief and/or additional evidence will be submitted to the AAO within 30 days. The AAO notes that neither a brief nor any additional evidence has been received.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; a hardship affidavit by the applicant's spouse; a psychological evaluation; copies of a residential lease, a single bank statement, and a few billing statements; and birth, marriage and divorce certificates. The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

The record indicates that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on February 22, 1999. The Form I-485 was denied on May 9, 2001 because the applicant had entered the United States on February 22, 1998 on advance parole after being in unlawful status prior to his arrival. On August 24, 2001, the applicant filed a motion to reopen, which was denied on October 1, 2001. On October 22, 2002 the applicant filed a Form I-485 under section 1104 of the Legal Immigration Family Equity (LIFE) Act, which was denied on March 6, 2008. A subsequent appeal was dismissed on March 27, 2009. The applicant filed a new Form I-485 on September 13, 2009. The field office director determined that the applicant had no lawful status in the United States from at least October 1, 2001 to October 22, 2002, a period in excess of one year, and that by voluntarily departing the United States on March 4, 2003 triggered the inadmissibility provisions of section 212(a)(9)(B)(i)(II) of the Act. As the applicant was seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

An application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The applicant's last departure from the United States occurred on March 4, 2003. It has now been more than ten years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the appeal will be dismissed as the waiver application filed pursuant to section 212(a)(9)(B)(v) of the Act is unnecessary.

ORDER: As the applicant is no longer inadmissible, the appeal is dismissed as unnecessary.