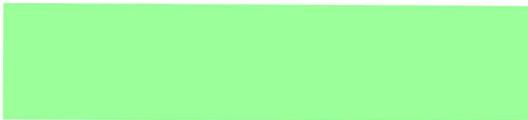
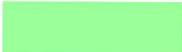




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 14 2014** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality 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 (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,


for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the prior decision of the field office director will be withdrawn and the application for a waiver of inadmissibility declared unnecessary.

The applicant is a native and citizen of Venezuela 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 again seeking admission 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 director found that the applicant failed to establish he has a qualifying relative as required for a waiver under section 212(a)(9)(B)(v). The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated September 19, 2013.

On appeal the applicant asserts on Notice of Appeal (Form I-290B) that there is a qualifying relative who is experiencing extreme hardship. With the appeal the applicant submits a statement, a statement from his spouse, country information for Venezuela, and notices related to petitions for status as a nonimmigrant and immigrant worker. The record also contains documentation submitted in support of an Immigrant Petition for Alien Worker (I-140) filed on the applicant's behalf and the applicant's Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 reflects that the applicant entered the United States as B-2 visitor in July 2007 and changed his status to an L-1A Intracompany Transferee in October 2007. In November 2008 the applicant requested a change of status to B-2. That request was denied on February 26, 2009 and the applicant was given 30 days to depart the United States, but did not leave until June 19, 2009. On December 5, 2009, the applicant attempted to enter the United States as a B-2 visitor, but as his prior B-2 visa had been cancelled he was found inadmissible pursuant to section 212(a)(7)(B)(i)(II) of the Act for not being in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission. The record shows that the applicant was then paroled into the United States until January 4, 2010, when he had a return flight to Venezuela. On December 30, 2009, an Immigrant Petition for Alien Worker (Form I-140) was filed on behalf of the applicant and at the same time the applicant submitted an Application to Adjust Status (Form I-485). The I-140 petition was approved on February 18, 2010, however the I-485 application was denied on July 27, 2011. The applicant departed the United States on August 25, 2011.

The director determined that the applicant had been unlawfully present in the United States from January 5, 2010, the day following expiration of his parole, until his departure on August 25, 2011. The director thus found the applicant inadmissible for a period of 10 years for having resided unlawfully in the United States for a period of one year or more and then departing.

The record shows that the applicant entered the United States on December 5, 2009, with parole valid until January 4, 2010. An Immigrant Petition for Alien Worker and an Application to Adjust Status were filed on December 30, 2009, prior to expiration of the parole. The applicant's I-140 petition was subsequently approved on February 18, 2010, and his I-485 application was denied on July 27, 2011.

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, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act (May 6, 2009).* Given that the applicant had a pending Application to Adjust Status, he did not begin to accrue unlawful presence until July 27, 2011, 28 days before he departed the United States. He is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act as determined by the director, and a waiver under section 212(a)(9)(B)(v) of the Act is unnecessary.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.