



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **NOV 07 2014**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg
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 record establishes that the applicant is a native and citizen of Vietnam 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen daughters and their mother, a lawful permanent resident of the United States.

The director concluded that the applicant had failed to establish that a U.S. citizen or lawful permanent resident spouse or parent would experience extreme hardship were the applicant unable to obtain a waiver of inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Director*, dated March 14, 2014.

In support of this appeal, counsel for the applicant submits the following: a declaration from the applicant, a declaration from [REDACTED], the applicant's children's mother, medical documentation, and biographic information pertaining to the applicant's children. The entire record was reviewed and considered in rendering this decision.

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 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 lawful resident spouse or parent of such alien...

With respect to the director's finding of inadmissibility, the record establishes that the applicant entered the United States without authorization in 2002 and did not depart the United States until 2009. The applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). Section 212(a)(9)(B)(v) of the Act does not provide for a waiver based on extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant a permissible consideration under the statute.

On appeal, the applicant contends that he does have a qualifying relative for purposes of a section 212(a)(9)(B)(v) waiver, namely, [REDACTED]. As noted in his declaration:

I have lived with [REDACTED] since about December 1963. [REDACTED] is now a LPR....

During the war time, especially in the area that we lived, many people never registered with the governmental authority their vital records such as marriage, birth or death.

Since living together, [REDACTED] and I represent ourselves to family, friends and others as husband and wife....

[REDACTED] and I have six daughters together....

In Vietnam, our relationship is considered as a common law marriage. Up to present, we have been maintaining this common law marital relationship for over fifty (50) years.

The U.S. Department of State Foreign Affairs Manual provides the following:

In the absence of a marriage certificate, an official verification, or a legal brief verifying full marital rights, a common law marriage or cohabitation is considered to be a "valid marriage" for purposes of administering the U.S. immigration law only if:

- (1) It bestows all of the same legal rights and duties possessed by partners in a lawfully contracted marriage; and
- (2) Local laws recognize such cohabitation as being fully equivalent in every respect to a traditional legal marriage, e.g.:

- (a) The relationship can only be terminated by divorce;
- (b) There is a potential right to alimony;
- (c) There is a right to intestate distribution of an estate; and
- (d) There is a right of custody, if there are children.

DOS Foreign Affairs Manual, 9 FAM 40.1 N1.2

The U.S. Department of State provides the following regarding common law marriages in Vietnam:

Vietnamese law does not recognize common law marriages. Authorities do issue certificates verifying cohabitation but these do not constitute legal marriages. Vietnamese law prohibits marriage between blood siblings, half siblings, first cousins or any two persons related closer than three degrees of separation. The legal age for marriage is 20 for men and 18 for women.

Country Reciprocity Schedule-Vietnam, U.S. Department of State at <http://travel.state.gov/content/visas/english/fees/reciprocity-by-country/VM.html> (last visited October 28, 2014).

As Vietnamese law does not recognize common law marriages, the applicant has failed to establish that [REDACTED] is a qualifying relative for purposes of a waiver under section 212(a)(9)(B)(v) of the Act. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

In the instant appeal, the applicant has not established that a qualifying relative for purposes of a Form I-601 waiver under section 212(a)(9)(B)(v) of the Act exists, namely, a U.S. citizen or lawful permanent resident spouse or parent. The applicant is thus statutorily ineligible for a waiver.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The waiver application is denied.