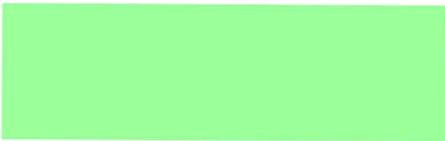


(b)(6)



U.S. Citizenship
and Immigration
Services



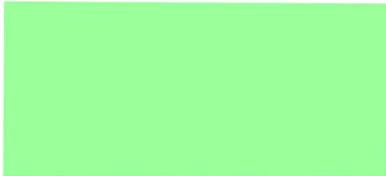
Date: **NOV 18 2014** Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(i)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i)(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. 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 applicant is a native and citizen of Brazil who states she is 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 unlawful presence. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Director concluded that that the applicant had not been interviewed by a U.S. Department of State consular officer to determine her eligibility for a visa and denied the application. *See Decision of the Director*, dated April 15, 2014.

On appeal, counsel for the applicant asserts the applicant is not inadmissible for illegal re-entry but for unlawful presence. He concedes that she has not been interviewed by a consular officer but asks that the applicant be allowed to continue her application process with USCIS.

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

(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 indicates that on February 16, 1997 the applicant requested admission into the United States at the Miami port of entry. She was detained and found to be inadmissible as an immigrant without immigrant documents. She was paroled into the United States in order to appear before an immigration judge. On July 29, 1997 she was ordered removed. She was instructed to appear for removal on October 2, 1997, however, she failed to appear for her removal. The record is not clear as to whether she left the United States, which would trigger inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, or how she re-entered the United States after any such departure.

These issues will need to be addressed in any future proceedings in order to establish whether she is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(II) of the Act. In the present matter, however, the applicant is not applying for an immigrant visa through consular processing and has not applied for adjustment of status with USCIS. As such, she has no underlying application which would allow her to enter or remain in the United States and no purpose would be served in adjudicating her waiver application.

In this case the applicant does not have an underlying application for admission. Accordingly, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.