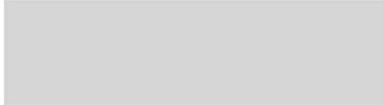




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 19 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 Mexico who entered the United States without inspection on or about January 26, 1996 and has lived in the United States unlawfully since this time. The applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, in an attempt to obtain a provisional waiver of inadmissibility. He states that he has a U.S. citizen daughter.

In a decision, dated October 15, 2014, the Director concluded that the applicant was not eligible to apply for a Form I-601 because he did not show that he belonged to one of the categories of applicants eligible to apply for a waiver. The Director states that the record failed to establish that a consular officer interviewed the applicant to determine his eligibility for a visa and that a ground of inadmissibility applied in the applicant's case. The Director denied the Form I-601 accordingly.

On appeal, the applicant states that he is an immigrant-visa applicant and the beneficiary of an approved Form I-130, Petition for Alien Relative. He states that he has a U.S. citizen daughter and would like to apply for a provisional waiver, because once he departs the United States he will be subject to the unlawful-presence provisions in the Immigration and Nationality Act (the Act).

The record includes, but is not limited to, the applicant's statements and a printout from a U.S. Citizenship and Immigration Services' website that explains provisional unlawful-presence waivers. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

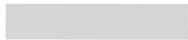
(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(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.

....

(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 [Secretary] 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, given the facts of the applicant's case, that he has submitted the incorrect form for the benefit he seeks. An applicant wishing to apply for a provisional unlawful-presence waiver, while still in the United States, must submit a Form I-601A, Application for Provisional Unlawful Presence Waiver, not a Form I-601.

Furthermore, the record does not show that the applicant has a qualifying relative making him eligible to apply for a waiver. Unlike section 212(h) waivers concerning criminal inadmissibilities, section 212(a)(9)(B)(v) waivers do not include U.S. citizen children as qualifying relatives. The applicant has not established that he has a qualifying relative, defined by statute as a U.S. citizen or lawful permanent resident spouse or parent.

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. The appeal will be dismissed.

ORDER: The appeal is dismissed.