



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 3 1 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 record reflects that the applicant is a native and citizen of Barbados 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 for one year or more and seeking readmission within 10 years of his last departure. The applicant was the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130), filed by his now-deceased mother, who was a U.S. lawful permanent resident at the time. That petition, approved in January 2006, was automatically revoked in May 2009. The applicant's sister subsequently filed an I-130 on his behalf that was approved in April 2011. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside in the United States.

The Director found that the applicant did not establish that he has a qualifying relative under section 212(a)(9)(B)(v) of the Act and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Director*, dated October 31, 2014.

On appeal, the applicant's sister submits proof that she is his legal guardian and states that several U.S. government officers told her that the applicant could combine her petition with their mother's petition; the applicant's mental disability qualifies him as an "adult child"; and therefore the exception to the unlawful-presence inadmissibility that applies to minors also should apply to the applicant. *Statement Accompanying Form I-290B, Notice of Appeal or Motion*, dated November 29, 2014.

On appeal, the applicant's sister also requests an oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. 103.3(b). Although this case poses unique issues, they can be addressed adequately in writing. The written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The record includes, but is not limited to, the applicant's sister's statement, medical records, documents establishing identity and relationships, and immigration records. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

....

(v) Waiver.-The Attorney General [now 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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects that the applicant entered the United States with a B-2 nonimmigrant visitor's visa in 2002, and he asserts on his Form I-1601 that he violated the terms of his visa in 2003. The record also reflects that the applicant was the beneficiary of a Form I-130 filed by his U.S. lawful permanent resident mother, which was approved on January 20, 2006. The Form I-130 was automatically revoked, however, because the applicant's mother passed away on May 14, 2006. We find he accrued unlawful presence from the time he fell out of status in 2003 until April 17, 2014, the date he departed the United States, according to his Form I-601 statement. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of his April 17, 2014, departure from the United States.

The applicant's sister indicates that the applicant did not accrue unlawful presence, as the exception for minors outlined in section 212(a)(9)(B)(iii)(I) of the Act applies to him. The applicant's physician states that the applicant suffers from moderate to severe mental retardation and has the understanding of a four year-old child. His sister calls him "an adult child." In addition, the record reflects that the Department of State's panel physician concurred with the assessment of the severity of the applicant's mental retardation. While we sympathize with the applicant's circumstances, he offers no legal basis to support the contention that section 212(a)(9)(B)(iii)(I) of the Act applies to individuals who are mentally challenged.

In addition, the applicant has not shown that he has a U.S. citizen or lawful permanent resident spouse or parent. Therefore, he is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act.

The record reflects the applicant's sister's attempt to have the initial Form I-130 filed on the applicant's behalf reinstated. However, the USCIS Vermont Service Center director denied humanitarian reinstatement, because the applicant's sister had not provided the necessary evidence to meet the reinstatement criteria. Had the applicant's first Form I-130 been reinstated through a permissible substitute sponsor, such as the applicant's sister, then the applicant could pursue a Form I-601 waiver in spite of his mother being deceased. The applicant may consider pursuing humanitarian reinstatement of the revoked Form I-130 his mother filed on his behalf. Although the applicant's sister filed a new Form I-130, which was approved on April 5, 2011, filing a new petition is not the equivalent of becoming a substitute sponsor for a beneficiary seeking humanitarian reinstatement of a revoked petition.

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.