



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 08 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

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you

Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further proceedings consistent with this decision.

The applicant is a native and citizen of Colombia found 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 one year or more and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

The field office director determined that the applicant had no pending Application to Adjust Status (Form I-485) and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 29, 2014.

On appeal the applicant asserts that she has an approved Application for Action on an Approved Application or Petition (Form I-824), has presented the application to the U.S. Embassy in Colombia, and has had an interview there. The record contains a statement from the applicant, a copy of Form I-824, and a letter from the U.S. Department of State, National Visa Center, addressed to the applicant's spouse. 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 the applicant entered the United States on October 29, 2006, with a B-2 visa, but remained beyond her authorized period of stay until departing on October 30, 2009. The applicant attended an interview at the U.S. embassy in [REDACTED] Colombia, on May 2, 2013, and was found inadmissible under section 212(a)(9)(B)(i) of the Act. She filed an I-601 waiver application on August 18, 2013, indicating that she had an immigrant visa application pending and providing her consular case number.

The record further reflects that the applicant submitted the Form I-601 to the Chicago, Illinois Lockbox facility, which is the filing address for applicants residing in the United States who have applications for adjustment of status pending. Filing instructions found at www.uscis.gov indicate the proper address to submit a waiver application for individuals outside the United States who are applying for immigrant visas is the Phoenix, Arizona Lockbox facility. Nevertheless, the filing was accepted and the application was forwarded to the Oakland Park field office.

The USCIS office with jurisdiction over Form I-601 waiver applications for immigrant visa applicants is the Nebraska Service Center. The matter will be remanded to the Field Office Director to forward to the Nebraska Service Center for adjudication and issuance of a new decision. If that decision is adverse to the applicant, it shall be certified for review to the AAO.

ORDER: The appeal is remanded for further proceedings consistent with this decision.