



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE:

**JUN 08 2015**

FILE #:

APPLICATION RECEIPT #:

IN RE: Applicant:

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:

[Redacted]

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](http://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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Baltimore, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the Democratic Republic of Congo and citizen of Belgium who was admitted into the United States as a non-immigrant and has not departed. She seeks a waiver of inadmissibility for unlawful presence, under section 212(a)(9)(B)(v) of the Immigration and nationality Act (the Act), 8 U.S.C. § 1182(9)(B)(v), in order to remain in the United States with her lawful permanent resident spouse and their children.

The Field Office Director concluded that the applicant is ineligible to adjust her status to that of lawful permanent resident because she stayed in the United States beyond the period authorized as a non-immigrant, noting that her overstay is not a ground of inadmissibility under the Act. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of Field Office Director* dated September 9, 2014.

On appeal, the applicant, through counsel, asserts that she accrued unlawful presence by staying in the United States after her non-immigrant status expired. *See brief submitted in support of Form I-290B, Notice of Appeal or Motion*, dated November 10, 2014.

The record contains a brief submitted on appeal; statements from the applicant and her U.S. lawful permanent resident spouse; identity and relationship documents; financial documents; school records; photographs; and reports on conditions in the Democratic Republic of the Congo. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present case, the record reflects that the applicant was last admitted to the United States on October 12, 2010, on a B-2 nonimmigrant visa. Her period of authorized stay expired on April 11, 2011.<sup>1</sup> On February 25, 2011, the applicant's U.S. lawful permanent resident spouse filed a Form I-130, Petition for Alien Relative, on her behalf, which was approved on June 7, 2011. On January 22, 2014, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Field Office Director denied the Form I-485 on September 9, 2014, finding that because the applicant was not in lawful status, she was ineligible to apply for adjustment of status.

Section 212(a)(9) of the Act provides:

(B) Aliens Unlawfully Present.-

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

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<sup>1</sup> Although the applicant asserts she was granted an extension of stay to September 30, 2011, the record does not include evidence of this extension. The issue of her extension, however, would not affect the outcome of this application.

...

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General 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 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 Attorney General regarding a waiver under this clause.

The Field Office Director determined that the applicant is not inadmissible under section 212(a)(9)(B) of the Act for unlawful presence. Because that section requires a departure or removal, and the applicant has not departed from the United States since her last lawful entry, it does not apply to her. Accordingly, because section 212(a)(9)(B) of the Act does not apply to her, we concur with the Field Office Director's decision that the applicant may not seek or receive a waiver of this ground of inadmissibility by filing the Form I-601 waiver application.

Certain immigrant-visa applicants who are spouses, children and parents of U.S. citizens may apply for provisional unlawful presence waivers before they leave the United States. The provisional unlawful presence waiver process allows individuals, who need only a waiver of inadmissibility for unlawful presence, to apply for a waiver in the United States before they depart for their immigrant visa interviews at a U.S. embassy or consulate abroad. The Form I-601 that the applicant filed, however, cannot be used in lieu of the provisional waiver form, and we have no jurisdiction over that application.

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.