

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)

Date: **MAR 31 2015** Office: NEBRASKA SERVICE CENTER FILE: [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:

SELF-REPRESENTED

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.

Thank you,

Handwritten signature of Ron Rosenberg in black ink.

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 as the underlying waiver application is unnecessary.

The record establishes that the applicant is a native and citizen of El Salvador who entered the United States in April 2001 with an H2B worker visa that then expired on December 1, 2001, but remained in the United States until voluntarily departing on February 27, 2005. The applicant was thus 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 in the United States for more than one year. The applicant does not contest the finding of inadmissibility but rather seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his lawful permanent resident father.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated June 25, 2014.

On appeal the applicant contends that his father needs his help due to medical conditions and that he also needs emotional support due to the loss of his youngest son who was murdered in El Salvador. With the appeal the applicant submits letters from his father's doctors, a death certificate for his father's youngest son, and letters of support from family and friends. The entire record was reviewed and considered in rendering this decision.

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

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 Attorney General (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 applicant accrued unlawful presence from the expiration of his H2B visa on December 1, 2001, until he departed the United States on February 27, 2005, thus making him inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within 10 years of the date of his departure.

As the record establishes that the applicant's last departure occurred on February 27, 2005, it has now been more than 10 years since the departure that made the applicant inadmissible. A clear reading of the law reveals that the applicant is no longer inadmissible pursuant to section 212(a)(9)(B) of the Act.

The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.