



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF K-T-T-

DATE: OCT. 8, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Vietnam, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On January 12, 2015, the Director denied the application finding that the Applicant was inadmissible for having been unlawfully present in the United States for more than one year, and had not established that refusal of admission would result in extreme hardship to a qualifying relative.

On appeal, the Applicant submits a letter from her son stating that the Applicant was unlawfully present in the United States because the Applicant was receiving treatment for a stomach ulcer. In support, the Applicant submits a letter from her child, correspondence from her doctor, and medical records dated from August 6, 2009, to September 17, 2009.

Section 212(a)(9) of the Act states, 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.

(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.

In this case, the record reflects that the Applicant arrived in the United States on February 10, 2009, and was authorized to stay in the United States until August 9, 2009. The record shows that the Applicant left the United States on September 28, 2010, or 385 days after the expiration of the authorized period of stay. The Applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year.

The Applicant is seeking a waiver of inadmissibility and indicates that her U.S. citizen son is her qualifying relative. Section 212(a)(9)(B)(v) of the Act states that a waiver is available to an applicant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence. As such, the statute only includes as qualifying relatives spouses or parents who are U.S. citizens or aliens lawfully admitted for permanent residence. Section 212(a)(9)(B)(v) of the Act. In this case, the Applicant's son is not a qualifying relative under the statute. As the Applicant has not established that she has a qualifying relative, she is statutorily ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Furthermore, the Applicant's son claims that the Applicant remained in the United States until September 28, 2010, in order to receive treatment for a health problem, but this is inconsistent with the doctor's letter which indicates that the Applicant was treated for a peptic ulcer from August 6, 2009, to September 17, 2009.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-T-T-*, ID# 13730 (AAO Oct. 8, 2015)