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FILE:



Office: COLUMBUS, OH

Date: FEB 01 2008

IN RE:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 in the United States for a period of one year or more and seeking admission within ten years of his departure. The applicant is the son of a U.S. citizen father and lawful permanent resident mother. The applicant 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 his father.

The field office 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. *Decision of the Field Office Director*, dated June 22, 2007.

On appeal, the applicant asserts that his father was diagnosed with Parkinson's disease, he has been receiving treatment and emotional changes may affect his health. *Letter in Support of Appeal*, at 1, dated June 30, 2007.

The record includes, but is not limited to, statements from the applicant and his father, letters of support for the applicant, letters from the applicant's father's physician and the applicant's father's medical records. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in April 1999, departed in December 2003 and re-entered without inspection in June 2004. Therefore, the applicant accrued unlawful presence from April 1999 until December 2003. As a result of this unlawful presence, the applicant is inadmissible to the United States under section 212(a)(9)(B) of the Act.

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.

....

(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.

Therefore, the applicant requires a waiver under section 212(a)(9)(B)(v) of the Act. This waiver is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen father and/or lawful permanent resident mother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that the applicant's claim to extreme hardship is based solely on the impact of his inadmissibility on his U.S. citizen father. Accordingly, extreme hardship to the applicant's father must be established in the event that he resides in the Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his father in the event that he resides in Mexico. The record reflects that the applicant's father is 60 years old. The applicant states that his father was diagnosed with Parkinson's disease in 2004, he has been receiving treatment and emotional changes may affect his health. *Letter in Support of Appeal*, at 1. The applicant's father's physician states that he has been treating the applicant's father for Parkinson's disease since October 20, 2004. *Letter from [REDACTED] M.D.*, dated May 21, 2007. The applicant's father's physician states that the applicant's father has bradykinesia, increased tremor, excellent strength throughout, subtle dyskinesias in his head and neck, mild shuffling, decreased arm swing bilaterally, hypophonia, mild hoarseness and difficulty swallowing. *Id.* He further reports that the applicant's father is taking three medications for his disorder, the medications were working well for him for a while, the medications are wearing off before the next dose is due, he is in need of assistance with his medication and daily chores, and his family assists him with the difficulties of his disease. *Id.* The applicant's father's physician previously stated that the applicant's father was severely immobile, his neurological condition would become progressively worse and he would be unable to learn new tasks. *Form N-648*, at 2, dated November 3, 2005. The applicant's father states that his wife and daughters take care of him and he needs attention 24 hours a day. *Applicant's Father's Statement*, at 1, dated June 30, 2007. Considering the serious nature of the applicant's father's disease, his age, the loss of needed family assistance, the loss of an established doctor-patient relationship, and the interruption of his medical regimen, the AAO finds that the applicant would experience extreme hardship if he relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his father remains in the United States. As mentioned previously, the applicant's father's physician states that the applicant's father is taking three medications for his disorder, the medications were working well for him for a while, the medications are wearing off before the next dose is due, he is in need of assistance with his medication and daily chores, and his family assists him with the difficulties of his disease. *Letter from* [REDACTED]

[REDACTED] M.D. The AAO notes that he previously indicated that the applicant's father's condition prevented him from speaking, reading and writing English. *Form N-648*, at 3. The applicant states that there have been occasions when his father has been hospitalized just by thinking that the applicant would not be by his side if something went wrong and that his father feels that the applicant is the only support for his mother and sisters. *Letter in Support of Appeal*, at 1. The applicant's father states that even though his wife and daughters take care of him, he needs attention 24 hours a day and they have always needed the applicant by their side. *Applicant's Father's Statement*, at 1.

The applicant's father states that the applicant is always taking care of him, he loves the applicant's daughter and his health would worsen without the applicant's daughter. *Id.* at 1-2. The record does not include substantiating evidence of the applicant's father being hospitalized just by thinking that the applicant would not be by his side, that his health would worsen without the presence of the applicant or the applicant's daughter, that emotional hardship would worsen his health, or that the applicant provides care that the applicant's mother and sisters could not provide. The applicant's father states that the applicant paid for his family to come to the United States and he has helped in financially supporting the family. *Id.* at 1. However, the record does not include evidence that the applicant is currently responsible for his father's medical bills and/or living expenses. The AAO notes that going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO recognizes that the applicant's father will endure difficulty as a result of separation from the applicant and is sympathetic to his situation. However, the AAO finds that extreme hardship has not been established in the event that the applicant's father remains in the United States without the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.