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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [redacted] Office: San Francisco Date: MAR 20 2003

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: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was present in the United States without a lawful admission or parole in August 1996. On November 28, 1997, he became the beneficiary of a Petition for Alien Relative filed by his lawful permanent resident father. On January 26, 1998, the applicant's father became a naturalized U.S. citizen. The applicant remained in the United States until March 2000 when he departed after receiving advance parole. The applicant was paroled into the United States on April 4, 2000. The applicant's departure triggered his inadmissibility under section 212(a)(9)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for an aggregate period of more than 180 days but less than 1 year.

He seeks a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to remain in the United States.

The district director discussed the requirements for a waiver under section 212(a)(9)(B)(v) of the Act. He concluded that the applicant had failed to establish the presence of extreme hardship to a qualifying family member and determined that a favorable decision was not merited. The district director then denied the application accordingly.

On appeal, counsel states that the applicant's father will suffer extreme emotional and psychological hardship if the applicant cannot stay in the United States. Counsel indicates that the applicant is the youngest of seven children and has a unique relationship with his father. Counsel also indicates that the applicant has always been available to help his father, more than his two brothers who live in the United States.

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

> (i) Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States, whether or not pursuant to section 244(e), prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
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> > (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 from the United States, is inadmissible.
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> (v) The Secretary, Department 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 to the satisfaction of the 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. No court shall have jurisdiction to review a decision or action by the Secretary regarding a waiver under this clause.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

The Board of Immigration Appeals (the Board) has held that extreme hardship is not a definable term of fixed and inflexible meaning, and that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. These factors should be viewed in light of the Board's statement that a restrictive view of extreme hardship is not mandated either by the Supreme Court or by its own case law. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

It is noted that the requirements to establish extreme hardship in the present waiver proceedings under section 212(a)(9)(B)(v) of the Act do not include a showing of hardship to the alien as did former cases involving suspension of deportation. Present waiver proceedings require a showing of extreme hardship to the citizen or lawfully resident spouse or parent of such alien. This requirement is identical to the extreme hardship requirement stipulated in the amended fraud waiver proceedings under section 212(i) of the Act, 8 U.S.C. 1182(i). Therefore, it is deemed to be more appropriate to apply the meaning of the term "extreme hardship" as it is used in fraud waiver proceedings than to apply the meaning as it was used in former suspension of deportation cases.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver

proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

An affidavit from the applicant's father indicates that he has been disabled since 1994 for a work-related injury. There is no description of the injury, how this limits his activities or how the applicant assists him other than giving him about $200 per month to help with bills. The affidavit further states that the applicant's father sees his doctor every two months to control his blood pressure and cholesterol. He also indicates that his wife is borderline diabetic and takes pills to control her condition. The record contains a note indicating that the applicant's father was seen on 11/22/00 for uncontrolled hypertension aggravated by stress related to his son. There was no prognosis or indication of treatment contained in the note.

The record places great emphasis on the father's disability but is devoid of references regarding his wife's role in assisting him.

A review of the documentation in the record, when considered in its totality, does not show that the applicant's father would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish extreme hardship would be imposed upon his father, no purpose would be served in addressing the discretionary issues in this matter.

In proceedings for application for 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.