



U.S. Citizenship
and Immigration
Services

HM

[Redacted]

FILE:

[Redacted]

Office: CHICAGO, ILLINOIS

Date:

SEP 09 2004

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. He 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. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen father. He 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 remain in the United States and reside with his U.S. citizen parents and siblings.

The District Director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director's Decision* dated July 22, 2002.

The record reflects that the applicant was admitted to the United States as a non-immigrant visitor on August 30, 1990, and according to his own sworn statement he has resided in the United States since then with short visits to Mexico to visit his family. Each time he returned to the United States he was admitted as a visitor for pleasure by presenting a valid nonimmigrant visa. On November 29, 1996, the applicant was admitted as a visitor for a period of four months, expiring on March 28, 1997. The applicant stayed longer than authorized and departed in October 1998. He reentered the United States as a visitor for pleasure on November 7, 1998. It was his departure in October 1998 that triggered his unlawful presence.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until October 1998, the date of his departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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

(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.

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 regarding fraud, misrepresentation and unlawful presence in the United States and after noting the increased impediments 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.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen father or lawful permanent resident (LPR) mother.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

On appeal the applicant states that his father suffers from diabetes and his mother from arthritis and that he is needed in order to assist both with their day-to-day activities. No documentary evidence was provided to substantiate the claim that the applicant's presence in the United States is necessary in order to assist his parents with their day-to-day activities. The applicant provides no evidence to show that his parents cannot take care of themselves and their daily chores or that the applicant's siblings cannot take care of them. Furthermore in the appeal filed on August 8, 2003, the applicant states that he will be submitting additional information regarding his parents' medical condition. To this date, over one year after the filing of the appeal, no additional documentation has been received by the AAO.

On appeal the applicant questions the reason he had to pay \$1,000 and states that it was his understanding that by paying \$1,000 he would be protected against being in the United States without permission. The \$1,000 fee was for the applicant to be eligible to file an application for adjustment of status while in the United States and has nothing to do with the waiver of inadmissibility.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). 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). *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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen father or LPR mother would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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.