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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: JUL 12 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:

[redacted]

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

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 spouse. 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 spouse.

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 March 4, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) misapplied the extreme hardship standard and that the evidence in the record establishes extreme hardship to the applicant's qualifying relative.

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.

The record indicates that the applicant entered the United States without inspection in January 1997. The applicant admitted that he departed the United States in December 2000 and attempted to reenter on January 3, 2001 by concealing himself in the trunk of a car. It was this departure to Mexico 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 December 2000, the date he departed the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

The record of proceedings reflects that on January 3, 2001, the applicant attempted to enter the United States by concealing himself in the trunk of a car that was presented for inspection at the San Ysidro, California port of entry. The applicant was apprehended and was found inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act. On January 4, 2001, the applicant was removed to Mexico pursuant to section 235(b)(1) of the Act 8 U.S.C. § 1225(b)(1). The record further reflects that the applicant reentered the United States on January 11, 2001, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The AAO finds that the applicant is inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A) as an alien previously removed and who seeks admission within five years of the date of such removal.

In addition, the AAO finds that section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) applies in this matter.

Section 241(a) states in pertinent part:

> (5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

The record of proceeding reflects that the applicant was removed to Mexico on January 4, 2001, reentered illegally after his removal on January 11, 2001, married a U.S. citizen on April 23, 2001, and filed an application for adjustment of status. He has never been granted permission to reapply for admission, therefore he is subject to the provision of section 241(a) (5) of the Act, and he is not eligible for any relief under this Act.

Notwithstanding the arguments on appeal, section 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provision of section 241(a)(5) of the Act, and he is not eligible for any relief under this Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.