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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

H4

**PUBLIC COPY**

[redacted]

MAR 04 2004

FILE: [redacted] Office: NEW DELHI, INDIA Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF PETITIONER: 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

**DISCUSSION**: The waiver application was denied by the Officer in Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India 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 more than one year. The applicant is the beneficiary of an approved Petition for Alien Relative filed on her behalf by her son. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her four U.S. citizen and legally permanent resident children.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish the requisite relationship to be eligible for a waiver. The application was denied accordingly. *See* Officer in Charge Decision, dated May 7, 2003.

On appeal, the applicant's son states that the applicant is his mother and that she had two additional sons and a daughter, all of whom legally reside in the United States.

The record contains a copy of the pedigree for the family from the government of Gujarat, India; an affidavit and translation; letters from one of the applicant's sons; copies of medical records for and letters from doctors regarding the applicant; copies of airline tickets evidencing travel by the applicant's son; a copy of a police clearance certificate from India for the applicant and copies of income tax returns for the applicant's son and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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.

In the present application, the record indicates that the applicant entered the United States with a visitor visa on June 19, 1997. The applicant applied for and was approved for two extensions of her authorized stay in the United States. The applicant untimely filed a third request for extension of her visitor visa on January 14, 1998. On June 28, 1999, the applicant was notified that her extension was denied and was advised that she must depart from the United States. The applicant remained in the United States beyond her authorized period of stay. The applicant accrued unlawful presence until November 29, 2000, the date on which the applicant departed 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.

A section 212(a)(9)(B)(v) 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 to the U.S. citizen or lawfully resident *spouse or parent of the applicant*. The applicant's children are not qualifying relatives. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings.

The AAO finds that the applicant has not established a relationship with a qualifying relative as required by section 212(a)(9)(B)(v) of the Act and therefore, based on the record, the applicant is ineligible for a waiver of her inadmissibility to the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval 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.