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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

MAR 0 4 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. On April 13, 2001, the applicant's Immigrant Petition for Alien Worker (Form I-140) was approved. The applicant seeks a waiver of inadmissibility in order to work and reside in the United States.

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

On appeal, the applicant states that his labor certification has been approved and that he is admissible to the United States pursuant to section 245 of the Act.

The record contains documentation supporting the applicant's Form I-140 petition. 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 December 4, 1994. The applicant remained in the United States beyond his authorized period of stay. The applicant accrued unlawful presence from April 1, 1997, the date of implementation of unlawful presence provisions under the Act, until July 15, 1998, the date on which the applicant departed from the United States triggering unlawful presence provisions. 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. The AAO notes that the OIC's decision finds the applicant inadmissible under section 212(a)(6)(C)(i) as well as section 212(a)(9)(B)(II) of the Act. However, the record does not demonstrate and the decision of the OIC does not articulate how the applicant, by fraud or willful misrepresentation of a material fact, sought to procure or procured a visa, other documentation, or admission into the United States or other benefit provided under the Act.

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

The applicant has not established a relationship with a qualifying relative as required by section 212(a)(9)(B)(v) of the Act. The applicant's Application for Waiver of Grounds of Excludability (Form I-601) lists only an uncle in Section B. Therefore, based on the record, the applicant is ineligible for a waiver of his inadmissibility to the United States.

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. *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.