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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: DEC 27 2007

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 PETITIONER:

[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, Chief
Administrative Appeals Office

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

The applicant is a 27-year old native and citizen of the Mexico. He was found to be inadmissible to the United States under 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). The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) and presently 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), so that he may adjust his status to lawful permanent resident of the United States.

The applicant first entered the United States illegally in 1995. He briefly departed the United States, and reentered without inspection, in 2000. The applicant is married to Maria Morales, a Mexican citizen who is also unlawfully present in the United States. The couple has two U.S. citizen children. The district director found the applicant inadmissible on the basis of his unlawful presence in the United States, and denied his waiver application finding that he lacked a qualifying relative.

On appeal, the applicant, through counsel, claims that his father-in-law is his qualifying relative and that he is therefore eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v). The applicant's appeal is accompanied by a psychologist's report and other evidence relating to his drunk driving offenses and rehabilitation.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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 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.

The record reflects that the applicant was unlawfully present in the United States for a period of over one year. The applicant does not dispute that he was unlawfully present in the United States.[1] The AAO therefore finds that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Having found that the applicant is inadmissible, the AAO must now address whether the applicant is eligible for a waiver under section 212(a)(9)(v) of the Act, 8 U.S.C. § 1182(a)(9)(v). A waiver under this section is available to an applicant who "is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence." The applicant does not have a U.S. citizen or lawful permanent resident spouse or parent.[2] Therefore, the applicant is ineligible for a waiver of inadmissibility under section 212(a)(9)(v) of the Act, 8 U.S.C. § 1182(a)(9)(v).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.

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[1] The AAO notes that the record contains documents filed by the applicant in his removal proceedings suggesting that he believes his brief departure in 2000 does not trigger inadmissibility under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). The AAO finds this contention irrelevant to the instant matter, which arises under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B).

[2] Contrary to the applicant's claim, his father-in-law is not a qualifying relative for purposes of his application.