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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ATLANTA, GA Date: FEB 06 2009

IN RE: [redacted]

APPLICATION: 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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Ghana 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is the son of a lawful permanent resident and has two U.S. citizen siblings and two lawful permanent resident siblings. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The district director found that the evidence submitted did not support a finding that the applicant's mother would suffer extreme hardship as a result of his inadmissibility. The application was denied accordingly. *Decision of the District Director,* dated March 22, 2006.

On appeal, counsel submits additional evidence and states that the applicant's mother would suffer extreme hardship as a result of the applicant's inadmissibility because she relies on the applicant for her everyday needs as she is elderly, suffers from medical problems and is not literate in the English language. *Counsel's Memorandum*, dated April 20, 2006.

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 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.

In the present application, the record indicates that the applicant entered the United States without inspection in September 1988. On June 17, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 28, 2004, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart the United States on November 18, 2004 and reenter the United States on December 30, 2004.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until June 17, 2002, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his November 18, 2004 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.

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 and/or parent of the applicant. Hardship the applicant experiences upon removal is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown that hardship to the applicant is causing hardship to the applicant's spouse and/or parent. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) 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.

The applicant states that his mother is a sixty-five year old senior citizen who cannot speak, read, or write English and who suffers from severe chronic health problems related to hypertension and degenerative joint disease that require ongoing medical treatment. *Applicant's Affidavit*, dated April 17, 2006. The applicant states that because of these limitations, his mother is unable to work and

completely depends on him for her financial sustenance, her communication with others, and her emotional and physical well-being. The applicant states that he serves has her interpreter on medical appointments; he helps her at the grocery store, where she cannot understand numbers, labels or price stickers; he drives her wherever she needs to go; and he provides her with financial assistance. In addition, the applicant states that because his mother has a problem with retention of fluids in her legs, which makes it difficult for her to walk at times, he helps her complete a series of exercises to improve her blood circulation. The applicant's spouse also describes how he takes his mother to church every Sunday, the only place where she can communicate with other Ghanaians that speak her language. Furthermore, the applicant's spouse asserts that his other siblings are either going to school or do not have the financial resources to provide their mother with the help that she needs. He states that although they occasionally help, their contributions are neither consistent nor sufficient. More specifically, the applicant states that his two brothers live too far from their mother to care for her and have families of their own to care for. He states that his other brother is in school and works part-time and that his sister does not work and does not drive. The applicant states that if he were removed from the United States, his mother's health condition would deteriorate because he is her primary caretaker and the only person familiar with her daily routine and her medical needs. The applicant also states that if his mother relocated to Ghana her diminished quality of life would have a severe emotional impact on her, that she would not receive the same medical care in Ghana and that he would not have the same resources to care for her. The AAO notes that the State Department's country specific information for Ghana, last updated September 23, 2008, states that medical facilities in Ghana are limited. Furthermore, the applicant asserts that his mother has been living in the United States since 1993 and would suffer greatly from being separated from the rest of her children. *Id.*

The applicant's mother states that she cannot speak, read, or write in English and that the applicant is her main support who takes her to medical appointments, helps her with her medicines, and helps her financially. *Mother's Affidavit*, dated February 17, 2006.[1] She states that denying the applicant's waiver application would be an extreme hardship for her. *Id.* The applicant's brother, [redacted] states that he moved from Atlanta to Sacramento, California in 2000 and since then the applicant has been the sole provider for their mother. *Brother's Affidavit*, dated April 18, 2006. The applicant's brother, [redacted] states that the applicant has been the sole person providing assistance to their mother, that he has three minor children, and works full-time as an auditor with an accounting firm, making it extremely difficult for him to provide assistance to his mother. *Brother's Affidavit*, dated April 19, 2006. The applicant's brother, [redacted] also states that the applicant provides assistance and care to their mother. *Brother's Affidavit*, dated April 14, 2006.

The record includes a letter from the applicant's mother's doctor, [redacted] which states that the applicant's mother is under his care for hypertension and degenerative joint disease. *Letter from* [redacted] dated April 5, 2006. He states that the applicant's mother relies on the applicant to bring her to monthly appointments and to help her decipher medical instructions and medications as

[1] The AAO notes that the mother's statement is in English and signed by the applicant's mother, but does not indicate that the statement was translated from Fanti, the language spoken by the applicant's mother, or translated from English to Fanti so that the mother knew what she was signing.

she is unable to read. *Id.* The record also includes a letter from the applicant's mother's church, which states that the applicant's mother depends on the applicant to bring her to and from church and that without the applicant's assistance, the applicant's mother's life would be extremely hard. *Letter from the* [redacted] dated April 7, 2006.

The AAO finds that the applicant's mother will suffer extreme hardship as a result of being separated from the applicant. The AAO finds that as a sixty-five year old woman with health problems, who does not drive and does not write, speak, or read English, she requires help in her every day activities. The applicant is the primary caregiver for his mother and the applicant has included statements from siblings attesting to the applicant's role in their mother's life and their inability to replace him as caregiver. In addition, the AAO finds that the applicant's mother will suffer extreme hardship as a result of relocating to Ghana to be with the applicant. The record shows that the applicant's mother has four other children living in the United States, is a member of her church community and has been living in the United States for over fifteen years. The record does not indicate that the applicant and mother have any other family members living in Ghana and medical care in Ghana is limited. Therefore, the AAO concludes that the applicant's mother would suffer extreme hardship as a result of the applicant's inadmissibility.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States, which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

The AAO must, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The adverse factors in the present case are the applicant's entry without inspection into the United States and his unlawful presence in the United States.

The favorable factors in the present case are the applicant's family ties to the United States; extreme hardship to his lawful permanent resident mother if he were to be denied a waiver of inadmissibility; and the applicant's lack of a criminal record.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.