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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H4

FILE: [redacted] Office: FRANKFURT, GERMANY Date: APR 06 2009

IN RE: [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. section 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

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.

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 Officer In Charge (OIC), Frankfurt, Germany. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Ukraine. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure from the United States. He is the son of a U.S. citizen. 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 reside with his mother in the United States.

The OIC concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen mother, and denied the Application for Waiver of Ground of Excludability (Form I-601) on November 20, 2006.

On appeal the applicant contends that the OIC failed to consider the discrationary factors in his case and should have given greater weight to his mother's situation.[1]

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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> (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.
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> . . . .
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> (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 [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.

[1] The AAO notes that the record indicates that the applicant may be represented. However, the record contains no Form G-28, Notice of Entry of Appearance as Attorney or Representative. Accordingly the applicant will be considered as self-represented and the decision will be furnished only to the applicant. However, all submitted evidence will be considered.

The record indicates that the applicant entered the United States in May 2002 with a B-2 visitor's visa, valid until November 26, 2002. The applicant failed to depart the United States by November 26, 2002, residing in the United States until August 2004, when he voluntarily departed to Israel. Therefore, the applicant was unlawfully present in the United States for over a year and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's legal permanent resident mother is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; s*ee also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence:

1. Statement from the applicant's 74-year-old mother asserting that the applicant is her only son and that she will suffer emotionally and financially if he is excluded from the United States.
2. Statement from [redacted]. establishing that the applicant's mother is suffering from chronic obstructive lung disease, hypertension, severe degenerative joint disease and hyperthyroidism.
3. Statement from [redacted] indicating that the applicant's mother has been under his treatment for symptoms of severe depression and anxiety since 1998.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The AAO acknowledges the assertions made by the applicant's mother regarding the impact that his inadmissibility will have on her emotionally and financially. It notes, however, that there is no documentary evidence in the record that addresses the applicant's mother's financial situation or how the applicant's exclusion from the United States would affect it. The record indicates that the applicant lives in Israel, but the record contains no published country conditions materials on the Israeli economy or documentation regarding the applicant's profession or employment in Israel which establish that he would be unable to assist his mother financially from outside the United States. Therefore, the record does not demonstrate that the applicant's mother would suffer financial hardship if the applicant is not allowed to enter the United States.

The record does, however, establish that the applicant's mother suffers from several health-related conditions. In his statement, [redacted] reports that the applicant's mother has obstructive lung disease, hypertension, severe degenerative joint disease and hyperthyroidism. While the AAO notes these diagnoses, it also observes that [redacted] fails to indicate the impact of these conditions on the applicant's mother's ability to perform daily activities, whether she requires any care or treatment as a result of her conditions or a prognosis for these conditions. [redacted], a licensed psychiatrist and pscyhotherapist, states he has been treating the applicant's mother since 1998. He also indicates that, in 2001, after her husband's death, she became severely depressed and had suicidal thoughts, and that the applicant stayed with her until she reached "remission" in 2004. [redacted] reports that the applicant's mother has been diagnosed with Major Depressive Disorder, and Panic Disorder with Agoraphobia. He states that it is his professional opinion that the applicant's mother would become mentally ill if the applicant is excluded from the United States.

While the AAO notes the limited nature of the documentary evidence supporting the applicant's claim of hardship to his mother if they were to remain separated, it, nevertheless, finds that, when considered in the aggregate, the age of the applicant's mother, the multiple conditions affecting her physical health, her past mental illness and its likely recurrence if she is not reunited with the applicant establish that she would suffer extreme hardship if the applicant's waiver application were denied and she remained in the United States.

As noted above, extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request. In this case,

the applicant has not addressed or detailed any hardship that would be faced by his mother if she were to reside with him outside the United States. As such the AAO is unable to find that the applicant's mother would suffer extreme hardship upon relocation.

The applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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 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.