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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: MAY 06 2011 Office: PHILADELPHIA, PA FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and the previous decisions of the district director and AAO will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought admission to the United States through fraud or misrepresentation of a material fact, and section 212(a)(9)(B)(i)(II) of Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker and seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to remain in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director* dated December 19, 2006.

On appeal, counsel for the applicant asserted that the applicant will be submitting additional evidence of extreme hardship to U.S. Citizen family members. *See Notice of Appeal to the AAO (Form I-290B).* Counsel requested 30 days in order to submit a brief and/or additional evidence. No additional statement or evidence was submitted with the appeal.

The AAO concluded that the applicant was ineligible for a waiver of inadmissibility as he did not have a qualifying relative and dismissed the appeal accordingly. *AAO Decision*, dated March 31, 2010. On motion, counsel states that the applicant's spouse is applying for lawful permanent residence and when the applicant's spouse adjusts her status, the applicant will have a qualifying relative and be eligible for an I-601 waiver. *Form I-290B*, received May 3, 2010.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 –

(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, 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.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 record reflects that the applicant is a thirty-seven year-old native and citizen of Mexico who attempted to enter the United States on January 12, 1997 with fraudulent documents indicating he was a Lawful Permanent Resident. He was permitted to return voluntarily to Mexico and reentered the country without inspection later in 1997 and has resided in the United States since that date. He last entered the United States on July 19, 2002 with advance parole and he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act as well as section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from 1997 until he filed an application to Register Permanent Residence or Adjust Status (Form I-485) in 2001.

On his application for a waiver of inadmissibility (Form I-601), the applicant indicated that he has three U.S. Citizen children and no other qualifying relative. Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of inadmissibility is available only where the applicant establishes

extreme hardship to his or her citizen or lawfully resident spouse or parent. On motion, the applicant has not provided any evidence that he currently has a qualifying relative. The possibility that the applicant's spouse may become a lawful permanent resident in the future does not permit her to be considered a qualifying relative. As the applicant does not have a qualifying relative, he is ineligible for a waiver of inadmissibility.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established he would merit the waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. The previous decisions of the district director and the AAO will be affirmed.

ORDER: The motion is granted and the previous decisions of the district director and the AAO are affirmed.