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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date:

(CDJ 2004 809 592 relates)

IN RE:



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)

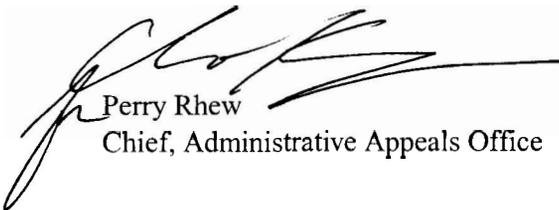
ON BEHALF OF APPLICANT:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Ciudad Juarez. 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 Mexico 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen father.

The officer-in-charge found that the applicant failed to establish extreme hardship to his U.S. citizen father and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge*, dated March 8, 2007.

On appeal, the applicant's father asserts that he and his sons will experience hardship if they are separated from the applicant. *Statement from the Applicant's Father*, dated March 27, 2007; *Prior Statement from the Applicant's Father*, dated April 22, 2006.

The record contains statements from the applicant's father; a copy of the applicant's father's naturalization certificate; a copy of the applicant's passport; copies of documentation relating to the applicant's medical care; documentation regarding the applicant's attendance at a community college; a letter from a potential employer for the applicant in the United States, and; information regarding the applicant's unlawful presence in the United States. The applicant also provided a document in a foreign language without a translation into English. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Apart from the untranslated document, the entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

The record reflects that the applicant entered the United States without inspection in or about March 2001. He remained until he voluntarily departed in March 2006. Accordingly, the applicant accrued approximately five years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his father on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 to a qualifying relative. 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.

On appeal, the applicant's father asserts that the applicant was previously denied admission to the United States due to the fact that he had a tumor in his eye. *Statement from the Applicant's Father*, dated March 27, 2007. He explains that the applicant has required 15 surgeries and regular medical care which consumed more than half of what the applicant's father earned per year. *Id.* at 1. The applicant's father indicates that he has experienced economic hardship as a result. *Id.* The applicant's father states that he advised the applicant to wait in Mexico, but that the applicant entered the United States to attempt to get his father to assist him with his medical care. *Id.* at 2. The applicant's father explains that the applicant had three surgeries in the United States that were

mostly covered by health insurance, but that the remaining cost has further caused economic hardship to his family. *Id.*

The applicant's father asserts that the applicant has good moral character. *Id.* He explains that he would do anything to care for his son and help him with his physical condition. *Id.* He states that the applicant was depressed before his tumor was corrected, yet now he is happy and a different person. *Id.*

The applicant's father stated that the applicant's family will be broken again and the applicant's brothers will endure separation if the present waiver application is denied. *Prior Statement from the Applicant's Father*, dated April 28, 2006.

The applicant submits documentation of his medical treatment in the United States from 2002 to 2005. The applicant provided a letter to show that an employer in the United States is willing to hire him. The applicant submitted evidence that he attended a community college.

Upon review, the applicant has not established that his father will suffer extreme hardship if he is prohibited from entering the United States. The applicant's father indicated that he and his other sons would experience hardship should they be separated from the applicant. It is noted that the applicant's brothers are not qualifying relatives under section 212(a)(9)(B)(v) of the Act, and direct hardship to them is not a basis for a waiver of the applicant's inadmissibility. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO recognizes that the applicant's brothers may face emotional hardship due to being separated from the applicant, and that such hardship may impact the applicant's father. Yet, the applicant has not established that his brothers would suffer consequences that can be distinguished from those ordinarily experienced when family members are separated due to inadmissibility, or that their hardship would raise the applicant's father's challenges to extreme hardship.

The applicant's father described past hardships to the applicant, including the fact that he had a tumor in his face that caused years of emotional challenges. As noted above, hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. While it is understood that the applicant's father cares for him and has endured emotional hardship due to the applicant's struggles, the applicant's father stated that the applicant has received effective medical treatment in the United States and he has recovered emotionally. The applicant has not shown that he presently faces struggles that elevate his father's challenges to extreme hardship.

The applicant's father expressed that he will endure emotional hardship if he is separated from the applicant. However, the applicant has not distinguished his father's challenges due to separation from those which are commonly experienced when parents are separated from adult children due to inadmissibility. The common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21

I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The applicant’s father indicated that he has endured significant financial hardship meeting the applicant’s medical expenses. Yet, he indicated that the applicant received successful treatment in the United States. The medical records pertain to treatment received from 2002 to 2005. The record does not reflect that the applicant presently requires ongoing treatment, unusual procedures or care, such that he continues to place a burden on his father’s economic situation.

The primary hardship described consists of family separation. However, the applicant has not asserted or shown that his father would experience hardship should he join the applicant in Mexico.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his father will experience extreme hardship should he join the applicant in Mexico or remain in the United States. Thus, the applicant has not established that denial of the present waiver application “would result in extreme hardship” to his father. 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 regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.