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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  
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FILE:

(CDJ 2004 808 514)

Office: CIUDAD JUAREZ, MEXICO Date:

**OCT 01 2009**

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, Mexico. 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 in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant's father is a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 4, dated September 14, 2006.

On appeal, the applicant states that the officer-in-charge erred in making his decision, the ten year bar will cause extreme hardship to his father, and he needs a 90-day extension to submit a professional opinion and supplemental documents. *Form I-290B*, dated October 11, 2006.

The record includes, but is not limited to, the applicant's statements, the applicant's father's statement, medical records and letter for the applicant's father, and the applicant's educational documents. Although more than 90 days have passed since the date of filing, the record does not include the aforementioned professional opinion and supplemental documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in March 2004 and departed the United States in November 2005. The applicant accrued unlawful presence during this entire period of time. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his November 2005 departure from the United States.

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.

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 to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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. These factors include the presence of 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 AAO notes that extreme hardship to the applicant's father must be established whether he resides in Mexico or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his father in the event he relocates to Mexico. The record includes a medical letter and medical records for the applicant's father, but they do not establish that he has any medical problems and that he would experience problems in Mexico due to medical problems. In addition, some of the records are in Spanish and they will not be considered as they do not include a translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3). The record lacks sufficient documentary evidence of emotional, financial, medical or other hardship factors that, in their totality, establish that the applicant's father would suffer extreme hardship if he relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his father remains in the United States. The applicant states that his spouse and parent have suffered

extreme emotional and financial hardship in the months that he has been waiting in Mexico for the decision on his Form I-601 waiver, and that his spouse and parent are not employed. *Applicant's Statement*, undated. The applicant's father states that he needs the applicant to work so he can send money to his spouse in Mexico, he is almost 70 years old, he has not worked in the last four to five years, he is only receiving \$200 in social security retirement, his children with legal status have their own families and expenses, and he has been waiting for the applicant so that he can support him and his spouse. *Applicant's Father's Statement*, undated. The record lacks sufficient documentary evidence of emotional, financial, medical or other hardship factors that, in their totality, establish that the applicant's father would suffer extreme hardship if he remained in the United States without the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th 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 (9th 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. 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) 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.