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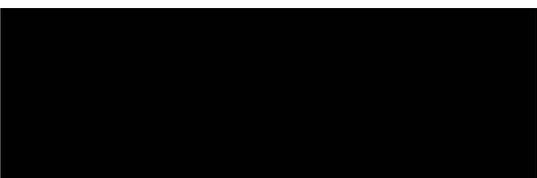


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

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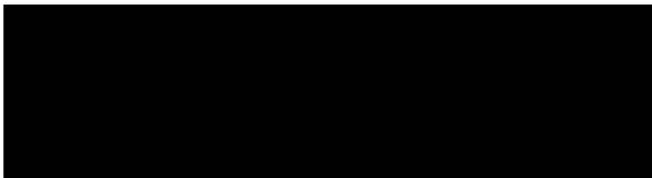
FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO  
(CDJ 2004 765 463 relates)

Date: **JAN 08 2010**

IN RE: Applicant: [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. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



**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 (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 10 years of his last departure from the United States. The record indicates that the applicant is the son of a lawful permanent resident of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with his lawful permanent resident father.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's father and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated September 22, 2006.

On appeal, the applicant's father states that he would like the applicant in the United States with the family. *Form I-290B*, filed September 26, 2006.

The record includes, but is not limited to, counsel's appeal brief and letters from the applicant's father and stepmother. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 [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 on July 10, 1998, the applicant's lawful permanent resident father filed a Form I-130 on behalf of the applicant. In May 2002, the applicant entered the United States without inspection. On August 12, 2004, the applicant's Form I-130 was approved. In October 2005, the applicant departed the United States. On October 20, 2005, the applicant filed a Form I-601. On September 22, 2006, the OIC denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his qualifying relative.

The applicant accrued unlawful presence from May 2002, the date the applicant entered the United States without inspection, until October 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his October 2005 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel states that the applicant has many family members in the United States and they are very united. *Appeal Brief*, filed September 30, 2008. In a letter dated August 16, 2008, the applicant's father states he knew the applicant should not have been in the United States illegally, but he wanted all of his family together. The AAO notes that the applicant's father is a native of Mexico who speaks Spanish, he spent his formative years in Mexico, and it has not been established that he has no family ties in Mexico. In fact, the AAO notes that the applicant's father has two adult children residing in Mexico. *See appeal brief, supra*. In a letter dated August 29, 2008, the applicant's stepmother states the applicant helped the family with finances. The applicant's father states he works but he has high blood pressure and diabetes. The AAO notes that other than a prescription note stating the applicant's father has diabetes and takes medication for his condition, there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. Additionally, the AAO notes that there was no documentation submitted establishing that the applicant's father could not receive treatment for his medical conditions in Mexico or that he has to remain in the

United States to receive his medical treatments. Furthermore, the AAO notes that the applicant's father is employed as a fitter apprentice and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico. The AAO finds that the applicant failed to establish that his father would suffer extreme hardship if he joined him in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's father if he remains in the United States, maintaining his employment, in close proximity to his family, and with access to medical treatment. As a lawful permanent resident of the United States, the applicant's father is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's father needs the applicant to assist him financially. *See appeal brief, supra*. The AAO notes that beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to his father's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.