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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: BALTIMORE, MD Date: DEC 01 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Ground of Excludability pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, as amended, 8 U.S.C § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision 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 District Director, Baltimore, Maryland and 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 record reflects that the applicant has two children who are U.S. citizens by birth. He seeks a waiver of inadmissibility under 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 wife and children.

The district director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, on the grounds that the applicant's U.S. citizen children are not qualifying relatives for the purposes of a 212(a)(9)(B)(v) proceeding. *Decision of the District Director*, dated August 4, 2006.

On appeal, counsel asserts that the district director abused his discretion in denying the application for a waiver; did not give proper weight to the evidence; and did not give proper consideration to the evidence. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated August 31, 2006.

The record reflects that the applicant entered the United States without inspection in 1994, returned to Mexico in 1999, and reentered the United States in February of 2000, again without inspection. A Form I-140, Immigrant Petition for Alien Worker, benefiting the applicant was approved on April 28, 2005. On April 11, 2005, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based upon the Form I-140. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 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.

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 the violation of 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. The applicant's children are not qualifying relatives for the purposes of a section 212(a)(9)(B)(v) waiver proceeding.

The record contains no evidence that the applicant has a U.S. citizen or lawful permanent spouse or parent. The AAO notes that the applicant's Form G-325, Biographic Information, indicates that his parents reside in Mexico and the Form I-485 filed by the applicant lists his spouse as a derivative beneficiary. Further, a search of relevant United States Citizenship and Immigration Services databases has failed to find that the applicant's spouse has become a lawful permanent resident through another avenue. As the record fails to establish that the applicant has the qualifying relative required by section 212(a)(9)(B)(v) of the Act, he is not eligible for a section 212(a)(9)(B)(v) waiver.

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 remains entirely with the applicant. *See* Section 291 of the Act, 8U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.