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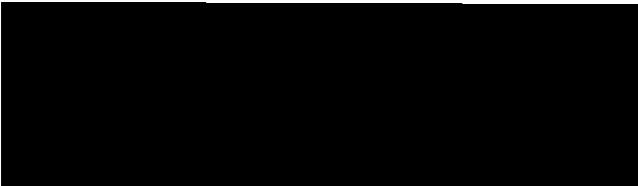
U.S. Department of Homeland Security  
20 Mass. Ave, N.W. Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: MEXICO CITY

Date: DEC 10 2008

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:



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).

  
John H. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City. 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 Ecuador 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 seeks a waiver of inadmissibility in order to enter the United States.

The district director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated July 28, 2006.

On appeal, counsel for the applicant asserts that the applicant's parents will suffer hardship should the applicant be prohibited from entering the United States. *Form I-290B*, dated August 15, 2006.

The record contains a statement from counsel on Form I-290B; statements from the applicant's father and sister; a copy of the applicant's father's permanent resident card; a letter from the applicant's father's physician; a medical record for the applicant's mother; a copy of the applicant's birth certificate, and documentation from the applicant's interview at the U.S. Consulate in Guayaquil, Ecuador. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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.

In the present matter, the record reflects that the applicant entered the United States without inspection through Mexico in 1999. He remained until 2005. Accordingly, he accrued approximately six years of unlawful presence. He now seeks reentry to the United States as an immigrant pursuant to an approved Form I-130 filed by his father on his behalf. The applicant was deemed 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 more than one year and seeking readmission within ten years of his last departure from the United States. 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 alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 pursuant to section 212(a)(9)(B)(v) of the Act. 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, counsel for the applicant asserts that the applicant's parents will suffer hardship should the applicant be prohibited from entering the United States. *Form I-290B* at 1. Specifically, counsel stated:

The consular officer that [sic] he has been in Ecuador for 9 months unable to find work to support himself that his parents have health problems and he can not help them. He is providing documents indicating that his father have health problems and need his assistance.

The applicant provides a letter from his father's physician that states that the applicant's father is "under treatment for Hyper Lipidemia, Chronic dizziness and Gastritis." *Letter from [REDACTED]*, undated. The applicant submitted records of his mother's regular visits to a medical center. *Record from Lutheran Medical Center*, dated from November 26, 2001 to May 31, 2006.

The applicant's father and sister each stated that the applicant assists his father and the applicant's mother with their health problems. *Statements from Applicant's Father and Sister*, dated August 16, 2006. The applicant's father and sister indicated that the applicant is the only one who can help his father and the applicant's mother. *Id.* at 1.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. Counsel, the applicant's father, and the applicant's sister reference hardship to the applicant's mother, including her health status. However, the applicant has not asserted or established that his mother is a permanent resident or citizen of the United States. Accordingly, he has not shown that she is a qualifying relative such that hardship to her may be considered as a basis for a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant has not provided adequate documentation or explanation to show that his father will experience extreme hardship if the applicant is prohibited from returning to the United States. The applicant's father is under the care of a physician for hyper lipidemia, chronic dizziness and gastritis, yet the brief letter from his physician does not show that he requires assistance or that his care is dependent on the applicant. Nor does it show whether his health affects his ability to work or perform ordinary functions. It is noted that the applicant's sister resides in the same building as the applicant's father. The applicant has not explained whether his sister is available to provide any assistance their father requires. The applicant has not asserted or shown that his father depends on him for economic assistance.

The applicant's father expressed that he wishes for the applicant to reside in the United States. Yet, he has not described any emotional effects or consequences that are greater than those ordinarily expected of the close family members of those prohibited from entering the United States. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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. The AAO recognizes that the applicant's father will endure some emotional hardship as a result of separation from the applicant, yet the record does not distinguish his situation from the common effects experienced by the family members of those deemed inadmissible. Thus, the applicant has not shown that his father's circumstances rise to the level of extreme hardship.

The applicant has not discussed whether his father may move to Ecuador to maintain family unity should he choose. Thus, the applicant has not shown that his father would experience extreme hardship should he move abroad to join the applicant. Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his father should the applicant be prohibited from entering the United States, considered in the aggregate, rise to the level of extreme hardship. 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.