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



**U.S. Citizenship  
and Immigration  
Services**

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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date: APR 06 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).

William F. Orissom  
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 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 enter the United States and reside with his permanent resident parents.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated July 17, 2007.

On appeal, the applicant asserts that his parents are experiencing hardship due to his absence from the United States. *Statement from the Applicant on Form I-290B*, dated August 8, 2007. The applicant indicates that his parents require economic support. *Id.* at 2.

The record contains, in pertinent part, a statement from the applicant on Form I-290B; a statement from the applicant's parent, and; information regarding the applicant's unlawful presence in the United States. 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:

(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 1996. He remained until he voluntarily departed in June 2006. Accordingly, the applicant accrued unlawful presence beginning on April 1, 1997, the date the unlawful presence provisions in the Act took effect, until June 2006. This period totals over nine years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his parent on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(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 pursuant to section 212(i) 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, the applicant asserts that his parents are experiencing hardship due to his absence from the United States. *Statement from the Applicant on Form I-290B*, dated August 8, 2007. The applicant indicates that his parents require economic support. *Id.* at 2.

The applicant's father stated that the applicant is an important part of their family and that he wishes for the applicant to reside in the United States. *Statement from the Applicant's Father*, dated July 7, 2006. The applicant's father lauded the applicant's good character, and indicated that the applicant helps his family. *Id.* at 1.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should he be prohibited from entering the United States. The applicant asserts that his permanent resident parents will experience emotional hardship should they remain separated from him. However, the applicant has not distinguished his parents emotional hardship from that which is commonly experienced by parents who are separated from an adult child due to inadmissibility.

U.S. court decisions have held that 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 indicates that his parents require economic support. Yet, the record contains no financial documents to show their income or expenses, or to establish that they require or receive contributions from the applicant. The applicant has not stated whether his parents have other children or relatives in the United States from whom they can receive any needed support. In his statement, the applicant’s father did not express that he or the applicant’s mother require financial assistance from the applicant. Thus, the applicant has not shown by a preponderance of the evidence that his parents would experience economic hardship should he be prohibited from entering the United States.

The applicant has not asserted or shown that his parents would experience hardship should they choose to relocate to Mexico with the applicant to maintain family unity.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his parents will experience extreme hardship should the present waiver application be denied. 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.