

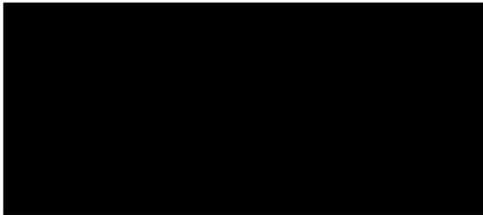
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U.S. Citizenship  
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FILE: [REDACTED]  
(CDJ 2005 520 178 relates)

Office: MEXICO CITY

Date: APR 03 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 212(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(g)

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 F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, was found inadmissible to the United States under sections 212(a)(9)(B) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for more than one year, and 212(a)(1)(A)(iii) of the Act, 8 U.S.C. 1182(a)(1)(A)(iii), as an alien classified as having a mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. The applicant sought waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(g) of the Act in order to reside in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, namely his U.S. citizen spouse, and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 21, 2008.

On appeal, counsel for the applicant submitted a brief, dated February 18, 2008, and referenced exhibits.

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...

Section 212(a) of the Act states, in pertinent part:

Classes of Aliens Ineligible for Visas or Admission.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.—

(A) In general.—Any alien—

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General (Secretary)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . . is inadmissible.

(B) Waiver authorized.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g) of the Act reads, in pertinent part:

The Attorney General (Secretary) may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General (Secretary), in the discretion of the Attorney General (Secretary) after consultation

with the Secretary of Health and Human Services, may by regulation prescribe.

The record indicates that on March 13, 2009, the applicant's U.S. citizen spouse sent a letter to the AAO, requesting a withdrawal of the instant appeal. With respect to appeals relating to Form I-601 applications, the applicant and/or his representative are the only individuals authorized to request that an appeal be withdrawn.<sup>1</sup> As such, the AAO is unable to withdraw the instant appeal based on the applicant's spouse's written request. However, as it appears that the applicant's spouse is no longer supporting the applicant's Form I-601 application, the AAO finds that the applicant is clearly unable to establish that his inadmissibility will result in extreme hardship to a qualifying relative, in this instance the applicant's U. S. citizen spouse.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.

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<sup>1</sup> The only application which the applicant's spouse may request be withdrawn with respect to the instant record is the Form I-130, Petition for Alien Relative (Form I-130).