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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

U.S. Citizenship and Immigration Services

#6

MAR 10 2010

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date:
(CDJ 2004 723 791)

IN RE: [redacted]

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico. 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 under section 212(a)(9)(B)(i)(II) of 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 is the son of a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his father.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge,* dated November 14, 2006.

On appeal, the applicant's father asserts that he would like his son to reside in the United States with him so that his son can have better opportunities. *Form I-290B, Notice of Appeal to the Administrative Appeals Office.*

In support of these assertions, the record includes a statement from the applicant's father. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record includes a document in the Spanish language unaccompanied by a certified translation. As such, the AAO will not review this document. *See* 8 C.F.R. § 103.2(b)(3).

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.

In the present case, the record indicates that the applicant entered the United States without inspection in 2002 and departed in November 2005. *Consular Memorandum and Notes, American Consulate General, Ciudad Juarez, Mexico*, dated December 2, 2005. The applicant, therefore, accrued unlawful presence from September 3, 2003, the date of his 18th birthday, until he departed the United States in November 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his November 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 a 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's father if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's father. If 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's father must be established whether he resides in Mexico or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's father joins the applicant in Mexico, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father was born Mexico. *Certificate of Naturalization for the applicant's father.* The record does not address how the applicant's father would be affected if he resides in Mexico. The record fails to indicate whether the applicant's father has familial and

cultural ties to Mexico. The record does not address employment opportunities for the applicant's father in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record makes no mention of whether the applicant's father suffers from any type of health condition, physical or mental, that would require treatment in Mexico and if so, whether he would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in Mexico.

If the applicant's father resides in the United States, the applicant needs to establish that his father will suffer extreme hardship. As previously noted, the applicant's father was born in Mexico. *Form I-130, Petition for Alien Relative*. The record does not address how the applicant's father would be affected if he remains in the United States. The record does not demonstrate that the applicant's father would experience financial hardship if he remains in the United States while the applicant lives in Mexico. The record also does not include a statement from a licensed healthcare professional documenting how the applicant's father would be psychologically affected from being separated from the applicant. The record makes no mention of and does not document that the applicant's father suffers from any type of physical or mental health condition that would require the applicant's care. As the record does not address this aspect of the hardship claim, the AAO is unable to find that the applicant's father would experience extreme hardship if he were to remain in 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.