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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

H6



FILE:

(CDJ 2004 802 135)

Office: MEXICO CITY, MEXICO

(CIUDAD JUAREZ)

Date: **MAR 25 2010**

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) and under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 District Director, Mexico City, 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 father of a United States citizen and claims a lawful permanent resident spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The District Director 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 District Director*, dated February 16, 2007.

On appeal, the applicant asks that United States Citizenship and Immigration Services (USCIS) reconsider its decision and notes that his family would suffer if his waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO); Statements from family members.*

In support of these assertions the record includes, but is not limited to, statements from family members. The AAO notes that the record also includes documents in the Spanish language unaccompanied by certified English-language translations. Accordingly, the AAO will not consider these documents. *See* 8 C.F.R. § 103.2(b)(3). With these exceptions, the entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 on February 1, 1996 the applicant attempted to gain admission to the United States as a lawful permanent resident by presenting a counterfeit Form I-94 at the San Ysidro port of entry. *Form I-213, Record of Excludable Alien; Form I-94, Departure Card*. The applicant was apprehended by immigration authorities and placed into immigration proceedings. *Form I-213, Record of Excludable Alien*. On February 8, 1996 an immigration judge ordered the applicant excluded and deported from the United States. *Decision of the Immigration Judge*, dated February 8, 1996. In March 1997, the applicant entered the United States without inspection and voluntarily departed in July 2000, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated March 16, 2006. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in July 2000. In applying for an immigrant visa, the applicant is seeking admission within ten years of his July 2000 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. Although not addressed by the District Director, the AAO also finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act for presenting a counterfeit Form I-94 to an immigration inspector.

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 and a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act are dependent first upon a showing that the bars impose an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. Hardship experienced by the applicant or his child as a result of his inadmissibility is not directly relevant to a determination of whether the applicant is eligible for a waiver.

The Form I-601, Application for Waiver of Ground of Excludability, indicates that the applicant has a lawful permanent resident spouse. However, the AAO finds the record to contain no proof of their marriage. Going on record without supporting documentary evidence will not meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO thus finds that the applicant has not established that he has a qualifying relative on which to base a waiver application under sections 212(a)(9)(B)(v) and 212(i) of the Act.

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)(6)(C) and 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.