

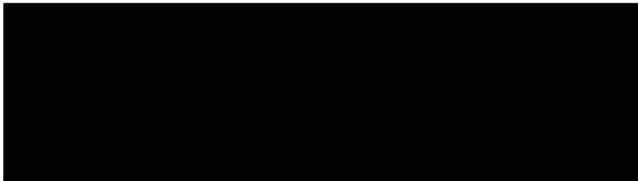
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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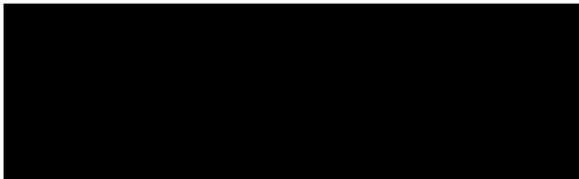
FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ)  
(CDJ 1992 704 243 relates)

Date **MAR 29 2010**

IN RE: [Redacted]

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

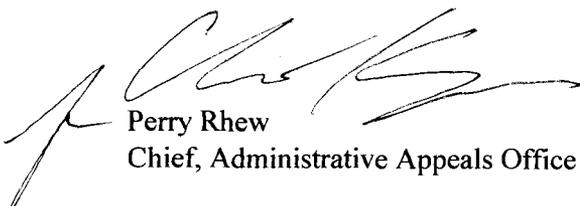
ON BEHALF OF APPLICANT:



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).

  
Perry Rhew  
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 record reflects that 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 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his lawful permanent resident father in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated February 28, 2007.

The record contains, *inter alia*: an affidavit from the applicant's father, [REDACTED]; two letters from [REDACTED] employer; a declaration from the applicant; a copy of the applicant's brother's naturalization certificate; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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 this case, the district director found that the applicant entered the United States in January 2000 without inspection and remained until December 2001. The applicant, however, contends he entered the United States using a visitor's visa in January 2000 and overstayed his visa for only ten months in order to care for his elderly father who was not in good health at the time. *Declaration of* [REDACTED], undated; *see also Brief in Support of Appeal* at 6, dated March 21, 2007 (contending the applicant remained in the United States beyond his visa expiration date).

The applicant has submitted no evidence to support his claim that he entered the United States lawfully and overstayed his visa by only ten months and the record indicates that the applicant accrued unlawful presence for over one year from January 2000 until December 2001. He now seeks admission within ten years of his 2001 departure. Accordingly, he is 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant's father, [REDACTED] states that he has lived in the United States for a very long time and that he lives with his son, [REDACTED], and [REDACTED] family. [REDACTED] contends that [REDACTED] is already a U.S. citizen and that he would love for his other son, [REDACTED] to live in the United States. [REDACTED] states he is an elderly man who is thinking about retiring soon and that he wants to spend more time with his sons and his grandchildren. According to [REDACTED], it is difficult for him to visit [REDACTED] in Mexico because his job and his life are in the United States and it is hard for him to travel given his age. [REDACTED] states that if [REDACTED] waiver application were denied, his "dream of having [his] family reunited will never be realized." In addition, [REDACTED] contends [REDACTED] stayed longer in the United States than he was supposed to because [REDACTED] "wasn't in the best of health and . . . needed someone to take care of [him]." [REDACTED] contends "[REDACTED] was a loving son and stayed with [him]." *Affidavit of* [REDACTED], dated March 19, 2007.

A declaration from the applicant states that he entered the United States to visit his father and brother. According to the applicant, his father is elderly and at the time of his visit, was not in good health. The applicant states his father's health deteriorated while he was visiting and that his father needed "constant care." The applicant states he would like to reside in the United States so that his father could live with him. *Declaration of [REDACTED] supra.*<sup>1</sup>

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his son's waiver application were denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, [REDACTED] does not discuss the possibility of moving back to Mexico, where he was born, to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (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). To the extent the applicant contends his father was ill and needed constant care, significantly, there is no claim that [REDACTED] currently needs the applicant's assistance.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to 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)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the

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<sup>1</sup> The record contains a letter signed by both the applicant and his father as well as other evidence written in Spanish, but these documents have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, these documents cannot be considered.

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.