



U.S. Citizenship
and Immigration
Services



H6

DATE: **OCT 24 2012** OFFICE: CIUDAD JUAREZ, MEXICO FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and 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 in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. The applicant is the son of lawful permanent residents and is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen daughter. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to return to the United States to live with his lawful permanent resident parents.

In a decision dated July 14, 2010 denying the Application for Waiver of Grounds of Inadmissibility, the Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and had failed to establish that the bar to admission would impose extreme hardship on his lawful permanent resident parents, the qualifying relatives. *See Field Office Director's Decision*, dated July 14, 2010.

On appeal, the applicant submits a brief, three notarized affidavits accompanied by identity documents for the affiants, copies of the applicant's previous Mexican passports for 2004-2005 and 2007-2008, utility bills from June-July 2010, Mexican tax records for June 2006 and January to May 2007, and articles regarding country conditions in [REDACTED]. The record includes, but is not limited to, a letter from the applicant's parents, copies of the lawful permanent resident cards of the applicant's parents and the naturalization certificate of the applicant's daughter. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

In the present case, the applicant's daughter filed a Form I-130, Petition for Alien Relative on behalf of the applicant where it states that the applicant was present in the United States as of August 21, 2008 and had entered without inspection in June 2002. *See Form I-130, Petition for Alien Relative*, filed September 10, 2008. On December 21, 2009, during his interview with a consular officer regarding his immigrant visa application, the applicant stated that he entered the United States without inspection in 2005 and remained until his departure to Mexico in 2007. On appeal, the applicant contests inadmissibility and states that he was unlawfully present in the United States for only one month in 2002 after which he returned to Mexico. *See Brief on Appeal*, dated August 6, 2010. The applicant further states that he was in Mexico from 2005 to 2007 and that the officer misunderstood him at the time of the interview. *Id.*

In support of his claim that he is admissible, the applicant presents a joint, notarized affidavit to establish his physical presence in Mexico from 2005 to 2007. *See Affidavit of [REDACTED] and the Applicant*, dated August 6, 2010. The two affiants and the applicant state that the applicant earns a modest living in Mexico and did not take any overseas trips from 2005 to 2007. *Id.* Neither of the affiants discusses the nature of the relationship between the applicant and the witnesses (e.g. neighbors, family, colleagues, et cetera). *Id.* The affidavits lack adequate details and do not demonstrate the manner in which the witnesses have acquired sufficient personal knowledge about the applicant's whereabouts during the requisite time period to prove the applicant's physical presence in Mexico from 2005 to 2007. In support of his claim, the applicant also presents Mexican tax records for June 2006 and January to May 2007 to establish that he was not physically present in the United States from 2005 to 2007. These tax records cover only six months and do not establish the applicant's physical presence in Mexico from 2005 to 2007. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure.

The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and claims that his qualifying relatives are his U.S. lawful permanent resident parents. While the record contains supporting documentation of lawful permanent resident status, the record does not contain evidence of the qualifying parent-child relationship, e.g., the birth certificate of the applicant. Since the applicant has not established a qualifying relationship with his parents, no

purpose would be served to determine if the bar to the applicant's admission imposes an extreme hardship on these persons.

In this case, the record does not contain sufficient evidence to overcome the finding that the applicant is inadmissible for being unlawfully present in the United States from 2005 to 2007. Since the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and has not proven otherwise, a waiver is required for admission pursuant to section 212(a)(9)(B)(v) of the Act. However, the record does not contain evidence of a qualifying spousal or parent-child relationship with U.S. citizens or lawful permanent residents. Consequently, the applicant is ineligible for a waiver under section 212(a)(9)(B)(v) of the Act.

In proceedings for a 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. 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.