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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES (SANTA ANA)

Date: JUL 12 2006

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his U.S. citizen wife and six U.S. citizen children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 8, 2004.

On appeal, counsel for the applicant contends that the applicant, the applicant's wife, and the applicant's children will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated November 2, 2004.

The record contains briefs from counsel in support of the appeal and the Form I-601 application; statements from the applicant and the applicant's wife; copies of Forms W-2, pay stubs, and tax records for the applicant and his wife; a copy of the deed to the applicant's home and evidence of associated monthly mortgage payments; letters verifying the applicant's wife's employment; copies of birth certificates for the applicant, the applicant's wife, and the applicant's children; a copy of the applicant's marriage certificate; a copy of the applicant's wife's naturalization certificate; copies of documents relating to the applicant's son's mental health and treatment; reports on conditions in Mexico; a Form I-864, Affidavit of Support, executed by the applicant's wife on his behalf, and; documentation of the applicant's prior entry to the United States through the use of a Form I-551 card belonging to another individual. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on or about September 5, 1995 the applicant entered the United States using a Form I-551 card that belonged to another individual. The applicant was ordered excluded and removed by an Immigration Judge on September 14, 1995, and his departure was confirmed on that date. Thus, the applicant entered the United States by fraud, and making a willful misrepresentation of a material fact (his identity) in order to procure admission to the United States. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. Hardship the applicant or his children experience is not directly relevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The record reflects that the applicant has a U.S. citizen wife and six U.S. citizen children ages one, three, ten, 12, 14, and 18. The applicant's wife stated that all of their children were born in the United States, their verbal Spanish language skills are limited, and that they do not know how to write Spanish. *Statement from Applicant's Wife*, dated May 5, 2004. The applicant's wife explained that her children would experience difficulty if compelled to relocate to Mexico, including an interruption of their education. *Id.* The applicant's

wife stated that her mother assists her and the applicant with childcare services, and that they have no one in Mexico to provide such help. *Id.*

The applicant's wife stated that the applicant is the primary income earner for their household. *Id.* She explained that she presently works, yet she would be unable to support herself and her six children in the United States without the applicant's assistance. *Id.* She noted that, though four of her children have a father other than the applicant, she receives no child support for them. *Id.* The applicant's wife indicated that she and the applicant would lose their home if the applicant departs, as she would be unable to meet the monthly mortgage payments alone. *Id.* She further stated that the applicant operates a tire shop, and she would be unable to run the business. *Id.*

The applicant's wife explained that she has numerous relatives in the United States, including her mother, father, two sisters, two brothers, and an aunt. *Id.*; *Statement from Applicant's Wife*, dated April 14, 2004. She provided that the only relative she has remaining in Mexico is her grandfather. *Statement from Applicant's Wife*, dated May 5, 2004.

The applicant's wife explained that the father of her first three children used to physically abuse her, and he threatened her life. *Statement from Applicant's Wife*, dated October 17, 2004. She stated that she grew up without a father, and she wishes for her children to have a father in their home. *Id.* at 2. She indicated that the applicant is a positive role model for their children, and he has accepted responsibility for his stepchildren. *Id.* The applicant's wife recounted an incident in which the applicant assisted her oldest son when her son was experiencing serious emotional difficulty. *Id.* The applicant's wife explained that her oldest son is under treatment for mental health problems for which he takes medication, and that the applicant assists in taking him to regular psychologist appointments. *Statement from Applicant's Wife*, dated May 5, 2004. She stated that it would be difficult for her to maintain her employment and meet her son's needs without the applicant's assistance. *Statement from Applicant's Wife* at 3, dated October 17, 2004.

The applicant's wife noted that the applicant departed Mexico due to a lack of employment opportunities, and that he would be unable to earn sufficient income there to provide financial support for her and her children in the United States. *Id.* at 4.

The applicant's wife expressed that they have a close family, and that she would suffer emotional hardship if they are separated. *Id.*

The record contains documentation to show that the applicant and his wife earned a net total of \$94,934 in 2003. *2003 IRS Form 1040, U.S. Individual Income Tax Return*. During 2003, the applicant's wife earned \$29,091.07. *2003 Form W-2 for Applicant's Wife*. The applicant provided a letter from Planned Parenthood that verifies his wife's employment at a total rate of \$13.57 per hour as of April 22, 2004. *Letter from Planned Parenthood*, dated April 22, 2004. The applicant's wife submitted a Form I-864, Affidavit of Support, on behalf of the applicant on March 3, 2001, in which she indicated that she earned \$11.23 per hour for 40 hours per week as of that date.

Upon appeal, counsel discusses hardship to the applicant, the applicant's children, and the applicant's wife. *Brief from Counsel*, dated November 2, 2004. Counsel reiterates the hardships described by the applicant's wife, as discussed above. Counsel notes that the applicant's wife has been in the United States since 1976, when she was age 11, thus she has resided in the United States for most of her life. *Id.* at 12. Counsel

explains that the applicant earns approximately \$73,000 per year, and that the applicant's wife would experience serious economic hardship if the applicant loses his income. *Id.* at 14-15. Counsel provides that conditions in Mexico are poor, and that the applicant would have difficulty earning income there. *Id.* Counsel highlights that the applicant and his wife would have difficulty supporting two separate households with six children. *Id.*

Counsel concedes that hardship to the applicant's children is not a direct consideration in the present proceeding. *Id.* at 19-21. Yet, counsel asserts that hardship to the applicant's children should be considered to assess the impact it will have on the applicant's wife. *Id.* Counsel explains that the applicant's wife and children will have significant emotional hardship if are separated from the applicant. *Id.* at 16. Counsel further highlights the detrimental effect that relocating to Mexico would have on the applicant's children's education. *Id.* at 15-16.

Counsel states that all hardships to the applicant's wife must be considered individually and in aggregate in order to determine if she will experience extreme hardship. *Id.* at 21-22. Counsel asserts that the totality of the applicant's wife's circumstances amount to extreme hardship. *Id.* at 22-23.

Upon review, the AAO finds that the decision of the district director was conclusory and presented no meaningful analysis of the facts of the present matter. When denying an application, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing an applicant why the evidence failed to satisfy his burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The district director's decision does not clearly establish the basis for her denial.

Upon a complete review of the evidence of record, the AAO finds that the applicant has established that his wife will experience extreme hardship if he is prohibited from remaining in the United States.

The evidence of record contains explanations of hardships that the applicant and his children will endure if the applicant departs. However, hardship to the applicant's children is not a direct concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant and his children will bear significant consequences if the applicant's waiver application is denied, only hardship to the applicant's wife may be properly considered in this section 212(i) waiver proceeding.

Hardship to an applicant or an applicant's child is not directly relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state will create hardship for the qualifying relative. Citizenship and Immigration Services (CIS) must further assess particular hardships to the qualifying relative due to the need to care for the remaining children alone, such as economic difficulties.

In the present matter, the applicant and his wife have six children, at least five of who are minors of school age or younger. All of the applicant's children were born in the United States and have resided here for their entire lives. The record reflects that none of the applicant's children write in Spanish, and their verbal Spanish skills are limited. Thus, it is evident that the applicant's children would have substantial challenges in adapting to a Spanish-language school system and society in Mexico. The Board of Immigration Appeals

has found extreme hardship to U.S. citizen children where they had resided in the United States their entire lives, they were accustomed to the American way of life, and they would be compelled to relocate to a foreign country where they did not sufficiently speak the local language in order to quickly integrate into the local society and educational system. *Matter of Kao & Lin*, 23 I&N Dec. 45, 49 (BIA 2001). Thus, the record supports that the applicant's children would face significant hardship in Mexico.

The record contains documentation to show that the applicant's eldest son struggles with emotional problems that require medication and treatment from a psychiatrist. While the record does not provide a detailed assessment of his current condition, the evidence is sufficient to establish that he has suffered psychiatric problems for which he receives care. It is understood that the deportation of the applicant would have a negative effect on his eldest son's mental health.

Relocation to Mexico poses significant hardship to the applicant's children, and such hardship for the applicant's children would have a serious impact on the emotional health of the applicant's wife.

The applicant's wife presently earns approximately \$13.57 per hour. Assuming the applicant's wife works 40 hours per week, 52 weeks per year, her annual income would total approximately \$28,225. Her total income for 2003 was \$29,091.07. If she remains in the United States with her six children, she would be compelled to support a family of seven. It is understood that, should the applicant return to Mexico, he would necessarily relinquish his employment and business in the United States, and he would be required to find a new source of income. The record does not show that the applicant's wife could depend on his financial assistance, at least in the short term. The 2006 Department of Health and Human Services annual Poverty Guidelines state that the poverty line for a family of seven is \$30,200. Thus, if the applicant's wife is compelled to support a family of seven on her salary of approximately \$28,225, her family's financial status would be pushed below the poverty line. Such economic circumstances constitute significant hardship. The applicant's wife would bear significant emotional consequences due to the difficulty in meeting her and her children's economic needs.

It is further understood that the applicant's wife would face significant economic challenges in providing for her six children with the applicant in Mexico. As both the applicant and his wife would be compelled to terminate their employment in the United States, they would face difficulty in providing for a family of eight.

The applicant's wife stated that she has significant ties to the United States, as most of her relatives reside here. In contrast, her only remaining relative in Mexico is her grandfather. Thus, she would lose the regular support and companionship of her relatives in the United States should she depart. She indicated that her mother assists her with childcare. It is understood that she would lose this assistance should she relocate to Mexico, which would likely result in additional economic hardship in Mexico due to the need to hire assistance or forgo employment opportunities.

The applicant's wife explained that the applicant has provided significant emotional support for her, including serving as a role model and caretaker for her children from a previous abusive relationship. The applicant's wife stated that she has found emotional and economic stability with the applicant that had eluded her in her previous years. Thus, the record supports that she would experience significant emotional hardship if she is separated from the applicant. As noted above, family separation is a primary concern in waiver proceedings under section 212(i) of the Act. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

Based on the forgoing, the AAO finds that the applicant's wife will face extreme hardship if the applicant's waiver application is denied. Should she remain in the United States without the applicant, she would endure dire financial consequences, emotional hardship due to separation from the applicant, and emotional difficulty in providing for and raising her children alone. Should she relocate to Mexico, she would face the emotional hardship of observing the struggle of her children and enduring separation from her family members in the United States. She would further face the financial struggle of seeking new employment and attempting to provide for a family of eight in a difficult economy. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if he is required to depart the United States.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States without inspection in 1995 and worked without authorization; the applicant entered the United States using fraudulent documentation in 1995, and; the applicant was convicted of driving under the influence of alcohol/drugs in 1997.

The positive factors in this case include:

The applicant has strong family ties to the United States; the applicant's wife and six children would suffer extreme hardship if he is compelled to depart the United States; the applicant has been convicted of a single misdemeanor in 1997 and he has not been arrested or convicted of a crime since, and; the record reflects that the applicant serves as a strong role model for his children, and he has taken responsibility for his four step-children including helping his eldest step-son through difficult emotional problems.

Although the applicant's immigration violations and criminal past cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.