



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: JUL 20 2006

IN RE:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[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.

Handwritten signature of Robert P. Wiemann in cursive.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(i), for being convicted of a crime involving moral turpitude and attempting to obtain immigration benefits by fraud. The applicant is the spouse of a U.S. citizen, father of three U.S. citizen children and step-father of two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), in order to reside in the United States with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 27, 2005.

The record reflects that, on August 2, 1992, the applicant was apprehended by border patrol at a checkpoint on Highway 111 near Niland, California. The applicant presented a U.S. Birth Certificate belonging to another, under the name '██████████'. The applicant later admitted that he was a Mexican citizen who had entered the United States without inspection on January 20, 1990. The applicant voluntarily returned to Mexico. The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission on an unknown date, but prior to October 26, 1992, the date on which he was convicted of petty theft in violation of section 490.1 of the California Penal Code (CPC). The applicant was sentenced to a fine. On June 29, 1996, the applicant married his spouse, ██████████ (Ms. ██████████). On August 25, 1998, the applicant was convicted of forge official seal in violation of section 472 of the CPC and was sentenced to a suspended sentence of 3 years in jail in favor of 5 years probation and 5 days in jail.

On July 5, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by Ms. ██████████. On November 19, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office and testified that he had voluntarily returned to Mexico after he had attempted to remain in the United States by presenting a U.S. birth certificate that belonged to another to immigration officers and had been convicted of petty theft and forge official seal.

On February 12, 2003, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that circumstances have changed since the denial of the Form I-601 such that the applicant's spouse and children would suffer extreme hardship should he be removed from the United States. *Brief In Support of Appeal*, dated April 27, 2005. In support of her contentions, counsel submitted the above-referenced brief, medical documentation for the applicant's son, a new psychological report for the applicant's spouse and country condition reports for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . if

(1)

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

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

(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.

(ii) Falsely claiming citizenship. —

(I) In General —

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

Counsel contends that the applicant did not attempt to enter the United States by presenting the U.S. birth certificate belonging to another in 1992. The AAO agrees that the applicant did not attempt to enter the United States by presenting the U.S. birth certificate belonging to another to immigration officers. However, the Record of Deportable Alien (Form I-213) indicates that the applicant presented the U.S. birth certificate belonging to another to an immigration officer in order to pass through a checkpoint and remain in the United States. The AAO finds that, by presenting the U.S. birth certificate belonging to another, the applicant attempted to procure benefits under the Act by fraud or willful misrepresentation of a material fact.

Hardship to the alien himself is not a permissible consideration under either a section 212(h) or 212(i) waiver. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Thus, any hardship suffered by the applicant's children, therefore, is considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's spouse in adjudicating a 212(i) waiver. Since a section 212(h) waiver may also be dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident children, if an applicant meets the standard for a section 212(i) waiver, the applicant is also eligible for a section 212(h) waiver.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Supra.* at 566. The BIA has held:

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).

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).

The record reflects that Ms. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1995. The applicant and Ms. [REDACTED] have a 12-year old daughter, a seven-year old son and a four-year old son who are all U.S. citizens by birth. The applicant’s seven-year old son has severe speech and language disorders. Ms. [REDACTED] has a 23-year old daughter and an 18-year old daughter from a previous relationship who are both U.S. citizens by birth. The record reflects further that the applicant is in his 30’s, Ms. [REDACTED] is in her 40’s and that Ms. [REDACTED] has been diagnosed with severe major depression and a generalized anxiety disorder.

Counsel contends that Ms. [REDACTED] would suffer extreme financial and emotional hardship whether she remained in the United States without the applicant or traveled to Mexico in order to reside with the applicant. Ms. [REDACTED] has not been employed outside of the home, except for a short 3 month period, since 1993. Ms. [REDACTED] claims no marketable job skills and is the primary caretaker for the children. The applicant has been working and supporting the family as a laborer for American Contractors, Inc. for the past 12 years. While Ms. [REDACTED] has not been consistently treated for a mental illness, the psychological report indicates that she is suffering from a severe Major Depression and Generalized Anxiety disorder and has been hospitalized on at least two occasions for severe headaches and severe abdominal and chest pains. *See Psychological Evaluation*. Counsel submits medical documentation that shows the applicant and Ms. [REDACTED] seven-year old son was diagnosed with severe speech and language disorders for which he receives treatment and has an active Individualized Education Plan (IEP) through the Montebello Unified School District. *See Letter from Speech and Language Specialist*. The psychological evaluation indicates that Ms. [REDACTED] is concerned that her seven-year old son would not receive the necessary treatment for his speech and language disorder in Mexico. Financial documentation indicates that the applicant earned \$32,627 in 2001 and that Ms. [REDACTED] has not significantly contributed to the household income since 1993. The

psychological evaluation indicates that Ms. [REDACTED] is concerned that she would be unable to provide the care and attention required for her seven-year old son to overcome his speech and language disorders if she were to remain in the United States without the applicant. **The applicant's position provides him, Ms. [REDACTED] and their children with health care coverage.** Ms. [REDACTED] feels that she would be unable to obtain employment that would provide her with the salary and healthcare that is required to support her family. Ms. [REDACTED] is concerned that if she relocated to Mexico to avoid separation from her husband, the applicant and she would find it difficult to obtain sufficient employment to support the family owing to the economy. Moreover, Ms. [REDACTED] is deeply concerned that her seven-year old son would not receive the intervention and therapy that he receives in the United States in the public school system. She is concerned that such services would not be available in Mexico, or be an expense they would be unable to afford. Country conditions on the record support Ms. [REDACTED] concerns.

Courts in the Ninth Circuit Court of Appeals have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss **decreased health care, educational opportunities, and general material welfare.**" *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The applicant and her husband are responsible for the care of four minor children. The couple's prospects, even with the applicant's past **experience, for adequate employment in Mexico are somewhat dim.** If she remained in the United States, Ms. [REDACTED] would face trying to maintain alone a household with four minor children, one of which has significant disabilities, without the financial, household and childcare assistance the applicant currently provides, as well as trying to combat her own psychological problems which would be exacerbated by the applicant's absence. It would be extremely difficult for Ms. [REDACTED] to mitigate the effects of separation by visiting the applicant, due to the cost in relation to any possible income she may earn and her family size. In Mexico, the significant speech and language disorder of the couple's son would most likely suffer, and it is probable that Ms. [REDACTED] and the applicant would be unable to adequately provide for his care. Although the applicant has over 12 years of experience in the construction industry, in Mexico, where wages are generally lower and the unemployment rate is high, these skills would be undermined and he and his family could be reduced to poverty, compounded by their family size and their son's disabilities. The hardship Ms. [REDACTED] would face is substantially greater than that which aliens and families upon deportation would normally face. Ms. [REDACTED] and the applicant have significant family ties in the United States, including the applicant's five U.S. citizen or lawful permanent resident siblings. A finding of extreme psychological, physical and financial hardship is the inevitable conclusion of the combined force of the submitted medical and psychological letters. A discounting of the extreme hardship Ms. [REDACTED] would face in either the United States or Mexico if her husband were refused admission is, therefore, not appropriate. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that Ms. [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the fraud or willful misrepresentation for which the applicant seeks a waiver, a 14-year old conviction for petty theft and an eight-year old conviction for forge official seal. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's wife if he were refused admission, the significant disability of the applicant's U.S. citizen son, the applicant's significant ties to the United States, his steady employment in the United States and payment of federal taxes.

The AAO finds that, although the immigration violation and convictions for crimes committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.