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**U.S. Citizenship
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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

MAY 31 2006

IN RE:

[REDACTED]

PETITION: 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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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. The applicant is the spouse of a U.S. citizen and mother of two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 24, 2004.

The record reflects that, on December 16, 1995, the applicant attempted to enter the United States by presenting a U.S. passport belonging to another. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. Consequently, on December 19, 1995, the applicant was expeditiously removed from the United States. On November 30, 1998, the applicant entered the United States as a K-1 nonimmigrant until February 28, 1999. On December 31, 1998, the applicant married her U.S. citizen spouse. On May 12, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on her marriage to her U.S. citizen husband, the fiancé who had filed a Petition for Alien Fiancée (Form I-129F) on her behalf. The applicant appeared at CIS' Los Angeles District Office and testified that she had been removed from the United States after she had attempted to enter the United States by presenting a U.S. passport that belonged to another.

On April 23, 2001, the district director issued a request for further evidence to the applicant informing her of the need to file the Form I-601 with supporting documentation. On July 24, 2001, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On September 24, 2004, the district director issued a notice of denial of the application as the applicant was inadmissible and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel contends that the district director erred in finding that the applicant's spouse and children would not experience extreme hardship upon the applicant's removal from the United States. *Brief In Support of Appeal*, dated November 5, 2004. In support of her contentions, counsel submitted the above-referenced brief, a new affidavit from the applicant's spouse, medical documentation in regard to the applicant's children, a psychological report for the applicant's spouse and documentation previously submitted. 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:

- (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.*

The district director found the applicant inadmissible to the United States but did not provide a basis for the finding of inadmissibility, nor did she indicate under what section of the Act the applicant was inadmissible. Counsel does not contest the district director's determination of inadmissibility. The AAO notes that the district director indicated the applicant was eligible for a waiver pursuant to section 212(h) of the Act, in which extreme hardship to the citizen or lawfully resident spouse, parent or children of the applicant would qualify the applicant for a waiver. However, the district director then proceeded to only analyze hardship to

the applicant's spouse as a basis for qualifying for the waiver. The AAO finds that the applicant is not inadmissible under a section of the Act which would permit the applicant to qualify for a waiver pursuant to section 212(h) of the Act. However, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act based on the applicant's admitted use of a U.S. passport belonging to another in order to attempt to procure admission into the United States in 1995 and may qualify for a waiver pursuant to section 212(i) of the Act.

Counsel contends that the district director failed to consider the combined effects of the financial and emotional hardships that the applicant's spouse faces if his wife were to be removed from the United States or if he accompanied her to Mexico.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore 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. Any hardship suffered by the applicant's two sons, therefore, is considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's spouse.

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 the applicant's husband, [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] a six-year old son and a four-year old son who are both U.S. citizens by birth. The applicant's eldest son has developmental problems and chronic asthma. The applicant's youngest son is autistic. The record reflects further that the applicant [REDACTED] in their 30's and that [REDACTED] has been diagnosed with a dysthymic disorder.

Counsel and ██████████ contend that ██████████ would suffer extreme financial and emotional hardship whether he remained in the United States without the applicant or traveled to Mexico in order to reside with the applicant. ██████████ been working as a data analyst for the Metropolitan Transport Authority for 6 years and has previously held local government jobs since 1996. ██████████ a bachelors and masters degree. The applicant claims no marketable job skills and is the primary caretaker for the children. While Mr. ██████████ has not previously been treated for a mental illness, the psychological report indicates that he suffers from a dysthymic disorder, which causes him to be more susceptible to major depressive disorders due to a history of untreated depression since childhood. *See Psychological Evaluation. See also Dysthymic Disorder, Psychology Information Online, www.psychologyinfo.com/depression/dysthymic.htm; Dysthymic Disorder, All About Depression www.allaboutdepression.com/dia_04.html.* Counsel submits medical documentation that shows the applicant and ██████████ eldest son was diagnosed with significant speech and/or learning impairments for which he received treatment and currently receives daily medication for his chronic asthma. *See Speech and Language Evaluation and Medical Letter.* Counsel submits medical documentation that shows the applicant and ██████████ youngest son has been receiving evaluations and treatment for developmental delays since 2003 and was diagnosed with autism in 2004. *See Speech and Language Evaluations.* The applicant and ██████████ youngest son continues to receive treatment which requires the training of the applicant in administering home-based therapy in addition to occupational and speech therapy received through the Infant Development Center, Regional Center and Special Education Program at Pamona Unified School District. The psychological evaluation indicates that ██████████ expressed concerns over his childrens (sic) health and noted that they each require special medical attention . . . his children would not receive the medical care their conditions require once living in Mexico.” Financial documentation indicates that ██████████ earned \$41,526 in 2000. ██████████ in his affidavit, states that he would be unable to provide the care and attention required for his eldest son to overcome his speech and language delays and asthma and for his youngest son to overcome his autism if he were to remain in the United States without the applicant. ██████████ position provides him and his children with health care coverage that has enabled the applicant and ██████████ to provide their children with the required care for their diseases/disabilities. Mr. ██████████ feels that he would be unable to obtain alternative employment that would provide him with the salary and healthcare that both his sons require for their illnesses. The medical documentation indicates that stability in the youngest son’s life is key to overcoming his autism, as well as a parent’s training in administering home-based therapy. As such, even ██████████ were able to afford professional care for his sons while he is working, this professional care could be detrimental to his youngest son’s illness. Mr. ██████████ concerned that if he relocated to Mexico to avoid separation from his wife, he would lose the medical insurance he obtains through his employer, and would find it difficult to obtain sufficient employment to support the family owing to the economy. Moreover, ██████████ concerned that what employment he obtained would be insufficient to provide the necessary care for his son’s conditions. Mr. ██████████ also deeply concerned that his youngest son would not receive the intervention and therapy that he receives in the United States in the public school system. He is concerned that such services would not be available in Mexico, or be an expense he would be unable to afford. There is no documentation of country conditions on the record.

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 two children. The couple’s prospects, even with [REDACTED] qualifications, for adequate employment in Mexico are somewhat dim. If he remained in the United States, [REDACTED] would face trying to maintain alone a household with two young children, both of which have significant disabilities, without the household assistance and childcare the applicant currently provides, as well as trying to combat his own psychological problems which would be exacerbated by the applicant’s absence. It would be extremely difficult for [REDACTED] to mitigate the effects of separation by visiting the applicant, due to the cost in relation to the children’s treatments, his income and family size. In Mexico, the significant health conditions of the couple’s sons would most likely suffer, and it is probable that [REDACTED] the applicant would be unable to adequately provide for their care. Although [REDACTED] is skilled and has an education, in Mexico, where wages are generally lower and the unemployment rate is high, these skills and education would be undermined and he and his family could be reduced to poverty, compounded by their family size and their sons’ disabilities. The hardship [REDACTED] face is substantially greater than that which aliens and families upon deportation would normally face. [REDACTED] has no immediate family in Mexico and he has significant family ties in the United States, including his U.S. citizen mother. 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 [REDACTED] would face in either the United States or Mexico if his wife 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 [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 and a prior order of deportation. The favorable and mitigating factors in the present case are the extreme hardship to the applicant’s husband if she were refused admission, her otherwise clean background, the significant disability of the applicant’s U.S. citizen sons and the applicant’s lawful reentry into the United States after her prior deportation and fraud or willful misrepresentation.

The AAO finds that, although the immigration violation committed by the applicant was 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.