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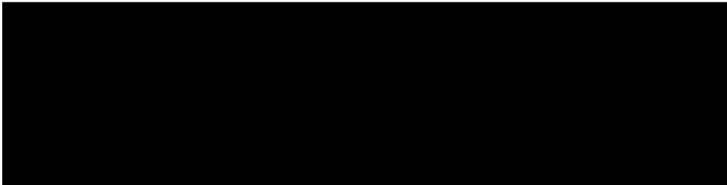
OCT 27 2006

IN RE:



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

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The district director, Chicago, IL denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED] is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for presenting a fraudulent border crossing card to an immigration officer, and pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having reentered the United States without permission after having been previously removed<sup>1</sup>. [REDACTED] 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 with his U.S. citizen (USC) wife, [REDACTED] and their two USC children.

The record reflects that [REDACTED] was expeditiously removed for presenting a fake border crossing card to an immigration inspector in 1999. [REDACTED] then re-entered the United States a few weeks later. As a result of presenting the fake border crossing card, being expeditiously removed, then reentering without being admitted, the district director found the applicant to be inadmissible to the United States. *District Director's Decision, dated September 24, 2004*. The district director also found 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 Inadmissibility (Form I-601). *Id.*

The record of proceeding contains the following: the birth certificate of [REDACTED] the birth certificates of the couple's two USC children, [REDACTED] age 11, and [REDACTED] age 3; a consultation and evaluation report for Mrs. [REDACTED] by a licensed clinical social worker; a consultation and evaluation report for [REDACTED] by the same licensed clinical social worker; the U.S. State Department's *Country Report on Human Right Practices* in 2003 for Mexico; income tax returns from 2000 to 2002; the custody agreement between [REDACTED] and her ex-husband; the couple's marriage certificate; the deed to the couple's house; a pledge envelope in the couple's names for their church; proof of monthly expenses, including gas and insurance bills; and proof of joint bank accounts. The AAO reviewed the record in its entirety before issuing its 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:

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<sup>1</sup> The AAO notes that, as the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, he will also require a waiver of this ground of inadmissibility (i.e. permission to reapply for readmission into the United States using Form I-212). He will be statutorily eligible to apply for this waiver when more than ten years have elapsed since his last departure from the United States. See *Matter of Honorio Torres-Garcia*, 23 I & N Dec. 866 (BIA 2006).

- (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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to the USC or lawful permanent resident spouse or parent of the applicant. Hardship the applicant himself experiences upon denial of admission is not considered in section 212(i) waiver proceedings. Hardship to the children is also not considered. The [REDACTED] two U.S. citizen children are not qualifying relatives. Thus, hardship suffered by them will be considered only insofar as it results in hardship to a qualifying relative in the application, in this case, [REDACTED]

On appeal, counsel cites to *Salameda v. INS*, 70 F.3d 447 (7th Cir. 1995), asserting that the extreme hardship to Mr. and [REDACTED] U.S. citizen children must be considered in these waiver proceedings. Counsel's reliance on *Salameda* is incorrect. *Salameda* does not stand for the proposition that hardship to the applicant's children, whether qualifying relatives or not, must be fairly considered in a rational manner, as counsel asserts. In fact, the 7th Circuit Court of Appeals, in *Oforji v. Ashcroft*, 354 F.3d 609 (7th Cir. Dec 31, 2003), specifically stated that the claim in *Oforji* "did not fall within the narrow ambit of *Salameda*"—where a child would constructively be deported because both of his parents were in deportation proceedings and the child was not a U.S. citizen and had no independent right to remain in the United States. *Oforji* at 616. In *Salameda*, the court found that the INS had purposefully not placed the child in proceedings so that hardship to him would not be considered. The court found that, since the child had an independent claim to suspension of deportation, but for the INS' refusal to place him in proceedings, hardship to the child would be considered. The court distinguished that situation from the situation in *Oforji*, where the children were U.S. citizens, and unlike the child in *Salameda*, had the legal right to remain in the United States. The facts in Mr. [REDACTED] case are more like the facts in *Oforji*, as his children are U.S. citizens and have the independent right to stay in the United States with their U.S. citizen mother. Therefore, hardship to the children can only be considered in relation to how it affects [REDACTED] sole qualifying relative—[REDACTED]

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*, *supra* 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 applicant has established extreme hardship to a qualifying relative 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 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at

566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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 [REDACTED] was born and raised in the United States and that she has no family or friends in Mexico. *See licensed clinical social worker's evaluation of [REDACTED] (evaluation) at page 1.* In contrast, [REDACTED] shares an especially close relationship with her father, also a U.S.-born citizen, as Mrs. [REDACTED] mother had been sick since [REDACTED] was seven years old and died when [REDACTED] was 25. *Id.* Mrs. [REDACTED] father is one of seven children in a close-knit extended family and she has forty-five U.S. citizen first cousins.

[REDACTED] feels secure and happy in her marriage to [REDACTED]. *See report on [REDACTED] dated, December 20, 2002.* [REDACTED] divorced her first husband because of his alcoholism, substance abuse of cocaine, verbal abuse, and over-controlling behavior towards her. *See report on [REDACTED] dated November 10, 2002.*

[REDACTED] father approves of her re-marriage to [REDACTED] and gives assistance and emotional support to the couple. *Id.*

[REDACTED] have two U.S. citizen sons. [REDACTED] age 3, is the biological son of Mr. and [REDACTED] age 11, is [REDACTED] stepson and [REDACTED] son from her previous marriage. *Id.* [REDACTED] also a U.S. citizen, shares custody of [REDACTED] with [REDACTED]. If she moved to Mexico with her husband, she fears that she would risk losing custody of her son [REDACTED] as she believes her ex-husband would fight to keep [REDACTED] with him in the United States. This would result in [REDACTED] separation from her oldest son, and [REDACTED] separation from his mother, brother, and stepfather. *See custody agreement between [REDACTED] and [REDACTED] evaluation of [REDACTED] and evaluation of [REDACTED]*

[REDACTED] graduated from high school but has no higher education. She previously worked as a waitress but now stays at home to care for her children. [REDACTED] did not finish high school and has worked as a line chef at a restaurant for years.

Counsel asserts that [REDACTED] would suffer extreme hardship if she went to live with [REDACTED] in Mexico or if she stayed in the United States and was separated from [REDACTED]. *Brief at 3.* Counsel asserts that if Mrs. [REDACTED] went to live in Mexico to avoid separation from her husband, this would mean separation from a large family support network and possible separation from her 11 year-old son. *Id at 5.* Counsel asserts that Mrs. [REDACTED] attachment to [REDACTED] unusually strong because her first husband was abusive towards her and Mr. [REDACTED] provides her happiness and stability. *Id.* Counsel asserts that [REDACTED] takes an active role in parenting

and Counsel asserts that maintains a delicate balancing act to enable to see his biological father without exposing to his father's substance abuse. *Id. at 7*. Counsel asserts that, along with a diminished income, would have to face this challenge without the help that Mr. provides her. Counsel asserts that would lose her house if separated from because she would not be able to afford making payments on it without income.

Counsel asserts that will suffer extreme hardship if separated from because she was in a previously abusive relationship and has provided her with stability and happiness. *Brief at 7 and evaluation of* wants to benefit from continued contact with his father, but works hard to shield from his father's substance abuse problem. provides her the support necessary to balance and help maintain complex relationship with his father. The loss of support provides his wife in this regard would result in extreme hardship to her. The evaluation reveals the high level of anxiety that is suffering and will suffer if she does not have the companionship and care of her husband. provides happiness and stability, in contrast to the abusive relationship she endured with her ex-husband. Separation would be extremely difficult, emotionally and psychologically for. Indeed, the licensed clinical social worker who interviewed on at least two occasions and also interviewed concluded that risks a depressive reaction if she is separated from her husband. *Evaluation at 3*. This leads to a conclusion that will suffer emotional instability and depression in the United States if her husband is not allowed to remain with her.

Considering the facts of this case in the aggregate leads to the conclusion that would suffer extreme hardship were she to move to Mexico with her husband or remain in the United States without him. Several factors exist in this case, that, when viewed in the aggregate, establish that denial of Form I-601 would result in extreme hardship on. On the one hand, risks losing custody of her 11 year-old son if she moves to Mexico. Her lack of work opportunity, given her inability to speak Spanish and her limited education, as well as conditions in Mexico, means that she would have a difficult time finding a job that would allow her to help support her family in Mexico. Separation from all of her close relatives, including her elderly father, who currently provide much needed emotional support, would also be the result of relocation to Mexico. On the other hand, if she stays in the United States, she risks a major depressive reaction. provides her the emotional stability she did not previously have and helps her navigate her son's complicated relationship with his biological father. This, together with a diminished standard of living and possible loss of the house she owns with, amounts to extreme hardship beyond what one would commonly face upon the denial of admission of a spouse. Though any one of these factors may not amount to extreme hardship, a finding of extreme emotional and financial hardship is the inevitable conclusion when these factors are viewed in the aggregate.

A discounting of the extreme hardship would face in either the United States or Mexico if her husband were refused admission is 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 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 applicant 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 [REDACTED] prior period of unlawful presence in the United States and the fact that he re-entered the United States after being removed, actions for which he now seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to his wife if he were refused admission, his otherwise clean criminal record, stable employment, and payment of taxes.

The AAO finds that, although the immigration violations committed by the applicant were 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.