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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO, IL

Date:

AUG 03 2007

IN RE: Applicant:

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:

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, Chicago, Illinois and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver 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 having procured entry into the United States by fraud or willful misrepresentation; the record indicates that in 1997, the applicant used a Legal Permanent Residence Card belonging to someone else to enter the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen father and children and lawful permanent resident mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. In support of this appeal, counsel submits a brief, dated February 21, 2005; a notarized affidavit from the applicant's father, dated February 12, 2005, and evidence of his U.S. citizenship; a notarized affidavit from the applicant's mother, dated February 12, 2005, and evidence of her lawful permanent resident status; notarized affidavits from the applicant's six siblings and evidence of their status in the United States; copies of the applicant's identification documents; a copy of the I-130, Petition for Alien Relative, approval notice on behalf of the applicant; a letter from a medical doctor regarding the applicant's father's medical conditions and information about the referenced conditions; affidavit of title for property held by the applicant in Chicago, Illinois; U.S. birth certificate and school identification card for the applicant's daughter, a U.S. citizen; U.S. birth certificate for the applicant's son; and tax documentation for the applicant. 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.

Based on the evidence in the record, the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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 of the bar to admission resulting from a 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 himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen father. 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 Board 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.

The applicant's father is a naturalized U.S. citizen. At the time the appeal was filed, the applicant's father was 95 years old. The record contains documentation regarding the applicant's father's ongoing medical conditions. According to [REDACTED], Access Community Health Network, "...[REDACTED] [the applicant] and his father [REDACTED] [the applicant's father] have been [REDACTED] patients since March 1999. [The applicant's father] is a 95 years [sic] old man who has unsteady gait related to his vertigo and due to his age related chronic medical conditions. [The applicant's father] visits [REDACTED] in a regular basis and he depends on [the applicant] on assistance from all of his daily living activities. [The applicant] is the primary and only caretaker of his father since his other sons and daughters have gone their own way. The number of medicines that [the applicant's father] takes in a regular basis causes to monitor constantly the side effects such as weakness, dizziness, headaches, and vomiting or diarrhea to name a few and that requires [the applicant's] constant care taking and to be accompanied to all of [the applicant's father's] visits to the physician and the Hospital. [REDACTED]. suffers from chronic vertigo, benign prostate hypertrophy and unsteady gait related to his vertigo." *Letter from [REDACTED] Access Community Health Network*, dated February 3, 2005.

The record also contains an affidavit from the applicant's mother, a lawful permanent resident. In said affidavit, the applicant's mother confirms that the applicant plays an integral role in her husband's care. As stated by [REDACTED], the applicant's mother, "...Ever since my son came to live with his father and I back in 1988, my son has been the primary source of support for my husband. Since the age of sixteen (16) my son has been the sole provider for my husband financially. And during the past four years my son has

become the primary caregiver for my husband as a result of his recent medical condition. I can attest that none of our other sons have offered any support for my husband either financially or morally in the past and have no intentions of volunteering in the future. Moreover, our two daughters that do see my husband on occasion are in no position to support my husband should my son [the applicant] have to return to our hometown of Ecuandureo. My son is an honorable man who has dedicated the better part of his life to making sure that his father is well taken care of in his later years..." *Affidavit from* [REDACTED] dated February 12, 2005.

The applicant's father provides his own affidavit in support of the applicant's waiver request. The applicant's father confirms the importance of the applicant's presence in his own life. As the applicant's father states "...My son came to the United States in 1988 at the age of sixteen (16)...to live in California with myself and my wife...His reason for coming to live with my wife and I was because I was unable to work...From the age of sixteen my son worked to earn money to support me and my wife while managing to go to school at night to earn an education. [The applicant], one of my seven children, was the only child who was willing to give up part of his life to further the life of his aging father...As a result of my medical condition, I have had to rely on my son almost exclusively...When my vertigo acts up, my son takes me to the hospital for treatment bi-weekly for up to six weeks at a time. Moreover, he has learned certain techniques such as vestibular rehabilitation exercises to help ease my condition. My son has also shifted around his work schedule and works a second shift job in order to accommodate my day to day needs as well." *Affidavit from* [REDACTED], dated February 12, 2005.

The district director, in his decision to deny the applicant's I-601, states that the applicant's siblings are of an adult age and reside in the United States and would be able to assist the applicant's father with whatever he may require due to his medical condition. *Decision from the District Director*, dated January 24, 2005. Although the district director is correct that the applicant has many siblings in the United States who are of adult age, counsel has provided detailed affidavits from each sibling, explaining in detail why he or she would not be able to properly care for the applicant's father should the applicant be removed from the United States. The primary reasons include insufficient financial resources, a lack of space in the home, or the inability to dedicate the time that is necessary to care for the applicant's father.

[REDACTED], a lawful permanent resident and brother of the applicant, states:

I cannot take charge of my father...I live in California in an apartment of two bedrooms, with my family of seven. My place is too small. *Affidavit from* [REDACTED], dated February 21, 2005.

[REDACTED], a lawful permanent resident and sister of the applicant, states:

...I am not able to take care of him [the applicant's father] for the following reasons: One of my sisters and I live in the same house and she has 2 children...The house does not have any extra space for us to take care of our parents...My work schedule is being on-call 24 hours, weekends and late hours, leaving me no time for their care...I am also

planning to go back to school, which will prevent me to be available for their care. Affidavit from [REDACTED] dated February 4, 2005.

[REDACTED], a U.S. citizen and brother of the applicant, states:

I...certify that at this moment under the circumstances that I live, such as appropriate space in my house, because we are a family of five, and we don't have the time to dedicate to his [the applicant's father's] needs, because my wife and I work a full-time jobs, it is impossible to take responsibility for my elder father...Affidavit from [REDACTED], dated February 4, 2005.

[REDACTED], a lawful permanent resident and brother of the applicant, states that he can not care for the applicant's father because of the following reasons:

...He is of old age and cannot provide the space needed for an elderly man to live...Older men require special needs that are to be attended to immediately, which I cannot, especially when more than 2000 miles away...In addition, my father requires medical attention from several doctors in Chicago, Illinois[,] thousands of miles from me...[the] [p]lace of residence where I reside will not permit the admittance of another person...My father does not like and would not like to live with me...not to mention the fact that my wife would not agree to it considering that he is too old now and would not be able to care for himself, or even pick up after himself. Affidavit from [REDACTED] dated February 12, 2005.

[REDACTED] a lawful permanent resident and sister of the applicant, states:

...I am a person of low income who has the economic responsibility of a family. I have 4 children alive in a small place and I do not have space in my home...for that reason I cannot take the position to take care of my father...[the applicant] is the only one that has sufficient time for its [the applicant's father's] care...To transport him to its situated medical appointment and to give its medicine, and to fulfill other commitments...like changing his pampers and giving him its medicines an [sic] food to him. Affidavit from [REDACTED] dated February 9, 2005.

[REDACTED] a U.S. citizen and brother of the applicant, states:

...I am unable to take care of my parents...for the reason that my wife and I both have full time working jobs and will not be able to attend to them [the applicant's parents] as well and take them to their doctor visits and any other medical emergency they might have due to their age. Affidavit from [REDACTED], dated February 5, 2005.

Based on the above documentation, it has been established that the applicant's father would lose the emotional, physical and financial support that the applicant has been providing to him for almost 20 years

were the applicant removed from the United States. This loss would lead to extreme hardship for the applicant's father, a U.S. citizen.

In addition, counsel contends that the applicant's father would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant. *Brief in Support of Appeal*, dated February 21, 2005. As stated by the applicant's father, "...Unquestionably my wife and I would be forced to move back to Ecuandureo [Mexico] with [the applicant] since my children either refuse to tend for their father or are financially incapable of tending to my constant needs. Being that I am a United States citizen, I receive many medical benefits that I would not receive should I be forced to move back to Ecuandureo. Currently the closest hospital to the small town of Ecuandureo is in Zamora...which is approximately an hour and a half from where I would reside. But even if my son was to move to a town that was closer to a medical facility, there is no Mexican healthcare system that I would qualify for like there is here in the United States. My son would be forced to pay for all my hospital visits and medicine out of his pocket which would be next to impossible...I fear that if I am forced to move back to Mexico with my son I will not get the care that I need to continue to live the final years of my life." *Supra* at 2.

Counsel points out in his brief that in 1997, the applicant's father traveled to Mexico to visit friends. While in Zamora, the applicant's father had to be rushed to the hospital due to a number of serious medical conditions that required urgent treatment. The hospital refused to provide any services until the hospital received payment. The applicant had to travel immediately from California to Mexico, a 10 hour drive, to present such proof, in order to ensure that his father received the appropriate treatment. *Brief in Support of Appeal*, at 4. Based on this experience, it has been established that the applicant's father would suffer extreme hardship were he to accompany the applicant to Mexico, due to his advanced age, the financial setbacks that the applicant would encounter in Mexico which would have a direct impact on the applicant's father quality of life, and the lack of affordable and immediate medical resources in Mexico.

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).

The AAO finds that the applicant's father would face extreme hardship if the applicant is required to return to Mexico. The applicant's father is likely to face serious setbacks in his medical condition without the applicant's support and assistance, as attested to by a medical professional who has been seeing the applicant's father for many years. He would also face extreme hardship in managing his daily affairs, as the applicant's presence is necessary in order to maintain his daily care and upkeep. The AAO also finds that the applicant's father would face extreme hardship if he were to accompany the applicant to Mexico. Although a national of Mexico, the record demonstrates that returning to Mexico at this time would be an extreme hardship to the applicant's father, emotionally, physically and financially; the applicant's father would surely experience a significant decrease in the quality of care, as he experienced in the past when visiting Mexico, as the record details.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant's father would face if the applicant were to return to Mexico, regardless of whether he accompanied him or remained in the United States, the lawful permanent resident status of the applicant's mother, the lawful permanent resident or naturalized U.S. citizenship status of the applicant's siblings, the applicant's U.S. citizen children, the applicant's apparent lack of a criminal record, property ownership, payment of taxes and the passage of ten years since the applicant's immigration violation. The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States, and periods of unauthorized presence and employment.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's father as a result of his inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.