



U.S. Citizenship
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[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CALIFORNIA Date: JUL 10 2007

IN RE: [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), 8 U.S.C. section 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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant does not contest this finding. 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 with her U.S. citizen spouse.

The record reflects that the applicant gained admission to the United States by fraud or willful misrepresentation in July 1998. The applicant and her husband, [REDACTED], were married in the United States on April 11, 2001. [REDACTED] a native of Mexico who became a naturalized U.S. citizen on August 20, 1998, has filed a Form I-130, Petition for Alien Relative, on the applicant's behalf. The applicant filed Form I-601, Application for Waiver of Grounds of Inadmissibility, on May 21, 2003.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director Jane E. Arellano*, dated October 5, 2005.

On appeal, counsel contends that the director failed to give proper weight to the hardship [REDACTED] would experience if compelled to take care of his disabled U.S. citizen son alone. Counsel points out that the applicant's son suffers from mild autism and/or Asperger's syndrome and requires special education and therapy in addition to the constant special care of his mother. The record includes a letter from [REDACTED] of the Clinica Medica San Miguel in North Hollywood, California dated January 7, 2002; a letter from [REDACTED] of the Children's Hospital Los Angeles to [REDACTED] dated August 5, 2002; a letter from [REDACTED], Principal of the Valerio Primary Center in Los Angeles dated April 10, 2003; a letter from [REDACTED] a social worker in the Early Start Program at the Exceptional Children's Foundation in Los Angeles, California dated September 30, 2002; medical descriptions of autism and Asperger's Syndrome; and 2002 tax records for the applicant and her husband.

The record reflects that in July 1998, the applicant used a counterfeit resident alien card and falsely represented herself to be a legal permanent resident in order to obtain admission to the United States.

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.

A waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

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, 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, 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. *Id.* at 566.

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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant's son suffers from mild autism and/or Asperger's Syndrome. Although the director correctly noted that the applicant's U.S. citizen son is not a qualifying relative, and hardship he may experience as a result of the bar to his mother's admission is not relevant to these proceedings, the director failed to consider the hardship that the applicant's U.S citizen husband will experience in caring for his son if the applicant returns to Mexico.

Although the AAO concludes that the applicant's husband would experience extreme hardship if compelled to care for his autistic son [REDACTED] alone in the United States, there is insufficient evidence demonstrating the applicant's husband would suffer extreme hardship if he returned to Mexico with the applicant and their son. The applicant's husband has stated that he "cannot relocate [his] family to Mexico, because the CREE special education system in Jalisco, Mexico, cannot adequately provide the intensive type of services he needs." Declaration of [REDACTED], dated April 28, 2003. In support of this assertion, [REDACTED] states in her letter as follows:

If the family had to return to the state of Jalisco, Mexico, [REDACTED]'s medical and educational needs would be dangerously neglected, due to the unavailability of adequate services and funding. In my 23 years of work in the field with families of young children with developmental disabilities, I have frequently researched the quality and availability of special education resources in Mexico, Central and South America. By direct telephone contact, internet searches and interviewing visiting educators and doctors, I have gathered this data. The "CREE" (Centro de Rehabilitación y Educación Especial) special education system in Jalisco, Mexico will not adequately provide the intensive type of program which [REDACTED] needs. In addition, the cost and travel involved in accessing special education services would prohibit access to the quality and quantity of services needed. [REDACTED]'s asthma condition requires monitoring by a specialist, low-cost refills of ongoing prescription medications and proximity to emergency medical services.

This evidence is insufficient to demonstrate extreme hardship to the applicant's husband. [REDACTED] states that special education programs in the State of Jalisco, Mexico are inferior to those in the United States, but fails to provide any of the "data" she claims to have collected supporting this assertion. The evidence demonstrates only that the quality of special care available for the applicant's son is likely to be inferior in one region of Mexico when compared to the care he currently receives in California. But it is unclear why the applicant's family could only relocate to that region of Mexico, and if they did, why they could not reside in proximity to special education programs and emergency medical services. The applicant has submitted no evidence showing her husband would experience hardship beyond the difficulties in obtaining proper care for their son if her husband returned to Mexico with her. Accordingly, the AAO finds that the evidence

submitted does not demonstrate that the qualifying relative in this case, the applicant's husband, will suffer extreme hardship if he chooses to return to Mexico with the applicant and their son.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be denied.

ORDER: The appeal is dismissed.