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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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Hq

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date: SEP 24 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)

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, 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 is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident. She 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 her spouse.

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 June 23, 2004.

The record reflects that, on January 29, 1981, the applicant married her spouse, [REDACTED] in Mexico. On January 24, 1995, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on March 22, 1995. On June 23, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On February 19, 2004, the applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco, California District Office. The applicant testified that on January 17, 1993, and January 18, 1993, she attempted to enter the United States by presenting fraudulent lawful permanent resident cards at the port of entry. The applicant testified that, on both occasions, she was denied admission and voluntarily returned to Mexico. The applicant testified that she, thereafter, entered the United States without inspection in 1993. On June 16, 2004, 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 spouse.

On appeal, counsel contends that the district director failed to consider all the relevant factors in determining extreme hardship and that the applicant's spouse would suffer extreme hardship. *See Counsel's Brief*, dated August 19, 2004. In support of his contentions, counsel submits the referenced brief, medical documentation, psychological documentation, financial documentation, an affidavit from the applicant's spouse, country conditions reports and copies of documentation previously provided. 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.

....

- (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 district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admission that she twice used a fraudulent lawful permanent resident card to attempt to enter the United States in 1993. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. 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.

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 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. *Id.* 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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remains in the United States or accompanies the applicant to the foreign country of residence.

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] is a native and citizen of Mexico who became a lawful permanent resident in 1990. The applicant and [REDACTED] have a 25-year old son and a 24-year old son who are natives and citizens of Mexico. The applicant and [REDACTED] have two grandchildren who are U.S. citizens by birth. The applicant and [REDACTED] are in their 40's.

Counsel contends that [REDACTED] would suffer financial and emotional hardship without the applicant. Mr. [REDACTED] has a sixth-grade education and has worked for the O'Chame Restaurant since 1991. Despite his lack of education and reading skills [REDACTED] has worked his way up through the restaurant's ranks to become a Sous Chef. [REDACTED] has a history of depression related to separation from his wife that manifests with headaches. *See Psychological Documentation*, dated May, 2004 through July 2004, and [REDACTED] *Affidavit*. [REDACTED] has been under psychological treatment for depression and anxiety since April 2004 and was placed on Fluoxetine (Prozac). [REDACTED] receives psychological treatment every 3 to 6 weeks. [REDACTED] is also undergoing physical therapy for pain associated with a cervical spine strain and for his headaches. *See Medical Documentation*. The psychological and medical documentation indicates that [REDACTED] medication was increased but he suffers from persistent anxiety and depression in relation to the applicant's immigration status and will continue to need medical supervision. The psychological and medical documentation indicate that a permanent separation from the applicant would be deleterious to his mental health. At the same time, Mr. [REDACTED] in his affidavit, indicates that he is concerned for the applicant's health and wellbeing in Mexico because she suffers from depression and would be unable to receive appropriate care in Mexico. Medical and psychological documentation indicate that the applicant was treated for depression in 2002 and placed on Zoloft. *See Medical Documentation*, dated December 2002. The documentation establishes that the applicant is again being treated for depression since January 2004, and is prescribed Zoloft. The documentation indicates that close monitoring of the applicant's mental health is required and that separation from the applicant would be detrimental to her mental health. *See Medical and Psychological Documentation*, dated July 13, 2004. Based on the preceding evidence, the AAO concludes that if [REDACTED] remained in the United States, he would face trying to maintain his household alone and trying to combat his psychological and medical problems, which would be exacerbated by the applicant's absence, and his concern for the applicant's psychological problems.

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.")

Additionally, the normal hardships that [REDACTED] would suffer should he accompany the applicant to Mexico would be compounded by [REDACTED] and the applicant's mental and physical health problems. The hardship [REDACTED] faces is substantially greater than that which aliens and families upon removal would normally face when combined with his psychological and physical health history and the applicant's history of

psychological problems. While [REDACTED] has family members in Mexico, those family members are dependent upon [REDACTED] income in the United States for support. A finding of extreme psychological hardship is the inevitable conclusion of the combined force of the submitted medical and psychological documentation. A discounting of the extreme hardship [REDACTED] would face in either the United States or Mexico if his spouse 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 [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 misrepresentation for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's spouse if she were refused admission, the hardship to the applicant's children if she were refused admission, the hardship to the applicant's spouse's family members in Mexico and the applicant's family members' significant ties to the United States.

The AAO finds that, although the immigration violations 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.