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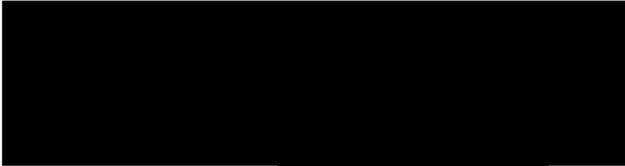
U.S. Department of Homeland Security
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U.S. Citizenship
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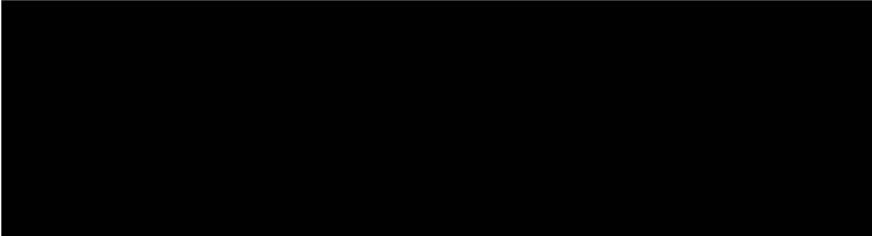
Date: FEB 20 2008

IN RE:



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 District Director, Phoenix, Arizona, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant, [REDACTED], is a native and citizen of Mexico who was found 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated February 14, 2006.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

On appeal, counsel requested an additional 90 days in which to submit a brief. On December 17, 2007, the AAO requested a copy of the brief as it was not included in the record. In response, counsel requested that the brief submitted with the Form I-601 be considered the appellate brief. The file is therefore considered complete.

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.

Citizenship and Immigration Service records reflect that the applicant presented a fraudulent employment letter in order to receive a border crossing card. The record therefore supports the finding that the applicant willfully misrepresented a material fact by claiming to have employment in Mexico so as to gain admission into the United States. She is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 section 212(i) waiver of the bar to admission resulting from 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 to the applicant and her children are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B) of the Act. Thus, hardship to the applicant and her children will be

considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident spouse. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's qualifying relative must be established in the event that he or she joins the applicant; and in the alternative, that he or she remains in the United States. 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 contains income tax records, pay statements, letters, birth certificates, information about Mexico, and other documents.

The letter in the record from [REDACTED] the applicant's husband, states that he and the applicant have four children who are 16, 15, 9, and 4 years old. He states that his wife is in charge of the household and that she attends school meetings, helps their children with homework, takes the children to doctor appointments, and drops them off at school. He states that it would be difficult for him to work and care for their children. He states that two have their children received an Arizona Quest for Kids scholarship and that he wishes to provide an elevated education for his children. He indicates that he can barely sleep because he is worried about what will happen to his family. He states that his family does everything together.

The psychosocial evaluation dated January 10, 2006 by [REDACTED], states that [REDACTED] is distraught and has difficulty relaxing and sleeping, has loss of appetite, and has weight loss about the prospect of his wife being deported from the United States. [REDACTED] states that [REDACTED] is concerned that his wife will have no where to go in Mexico and will not be able to support herself. He conveys that Mr.

██████████ indicates that he will not be able to care for his children without his wife's help. ██████████ states that ██████████ completed high school and worked as an elementary school teacher in Mexico for 12 years. He states that ██████████ married his wife in 1990. He states that ██████████ has five brothers and three sisters, four of whom live in Arizona and the rest of the family lives in Mexico. ██████████ states that Ms. ██████████ completed sixth grade and has three brothers and four sisters. He states that ██████████ was a housewife until 2002, when she went to work part-time cleaning houses. He states that the ██████████ convey that they share parental duties, that ██████████ is the primary caregiver, and that they are a close family. Mr. ██████████ states that ██████████ meets the criterion for DSM IV 309.24 Adjustment Disorder with anxiety. He states that the ██████████ children, especially the two youngest, will have severe emotional and developmental consequences if ██████████ were deported.

The record contains a list of ██████████'s relatives in the United States, which are his cousins, in-laws, a brother, and a niece and a nephew.

The record contains a letter from the pastor of the ██████████ church and a letter from a friend. It also contains a letter from the Site Coordinator, High School Program Coordinator, for Arizona Quest for Kids, which indicates that ██████████ volunteers, attends classes to help parents understand child development and parenting methods, learn financial planning, and gain tools to assist their children in life. The Site Coordinator conveys that it is unusual at her site to have two members from the same family (██████████ son and daughter) participating in Arizona Quest for Kids. The letter from ██████████ Corporate Recruiting Manager, W.P. Carey Graduate Career Management Center, Arizona State University, conveys that ██████████ has volunteered through Arizona Quest for Kids.

The record reflects that ██████████ has been employed as a tape paper worker since 2000. The October 6, 2005 letter from Contemporary Drywall, his employer, indicates that he is paid \$16.00 per hour.

The report prepared by ██████████, C.P.A., P.C., shows the ██████████'s projected monthly net wage as \$2,225.47 and their projected monthly expenditures as \$6,845. Their current monthly total income after deductions is shown as \$3,535.11 and their total expenditures as \$3,609.20.

Counsel states that ██████████, the applicant's husband, has lived in the United States for over 20 years and has little contact with Mexico. He states that he has four children, one is a lawful permanent resident and three are U.S. citizens, and that he has 20 relatives in the United States. Citing *Moore vs. City of East Cleveland*, 431 U.S. 494, 503-04 (1997), counsel states that the Supreme Court case reflects the importance of the family institution. He indicates that ██████████ would be devastated if separated from his family. Counsel states that two of the ██████████ children are members of Arizona Quest of Kids, which shows the great effort of the ██████████ family. If ██████████ accompanied his wife to Mexico, counsel states that he and his son, ██████████, would have to abandon their U.S. residency status and would have a bleak future. He states that ██████████ now earns between \$2,500 and \$3,000 monthly and would not have this income in Mexico, which is not the typical and normal hardship as envisioned by the courts. Counsel states that the financial burden of maintaining two households would require ██████████ to spend nearly \$3,300 above his current monthly expenditures. He states that the applicant contributes \$3,300 to the household, which is the worth of her job duties of cooking meals, washing laundry, cleaning the house, and transporting the children to school. Counsel states that without the applicant these duties would shift to ██████████ According to

counsel, [REDACTED] would be concerned about the safety of his family in Mexico because of kidnappings targeting middle class persons. Counsel states that the applicant established discretionary relief.

The record reflects that [REDACTED] income, which is barely above poverty level for a family of six, would not be sufficient to provide his children with childcare if his wife were removed from the United States. It also reveals that [REDACTED] is actively involved in the education of her children, as attested to by the letters concerning Arizona Quest of Kids. Thus, [REDACTED] would experience extreme hardship if he remained in the United States without his wife.

The applicant has also established that her husband would experience extreme hardship if he were to join her to live in Mexico.

Counsel states that [REDACTED] and his son would have to abandon their U.S. residency status if they moved to Mexico. The AAO agrees that losing lawful permanent residency constitutes extreme hardship to [REDACTED] as he would not be allowed to legally reenter the United States or ultimately become a United States citizen if he were to abandon his U.S. residence.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's family. The unfavorable factor in this matter is the applicant's misrepresentation. The AAO notes that the applicant does not appear to have a criminal record.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's immigration violation, it finds that the hardship imposed on the applicant's husband as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.