

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

tl2

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JUL 16 2008**

IN RE: Applicant: [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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application will be approved.

The applicant is a native and citizen of Honduras. The record indicates that the applicant failed to disclose, on both his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) and during his I-485 interview, that he had previously been deported in March 1988 and had subsequently reentered the United States without inspection in November 1998. It was determined that the applicant was inadmissible 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 entry into the United States by fraud or willful misrepresentation. 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 spouse and children.

The director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated March 15, 2006.

In support of the appeal, counsel submits a letter, dated March 28, 2006 and a support letter from a minister of the Ocala Spanish Congregation, dated February 1, 2004. 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, 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.

Counsel first asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. As counsel contends in her letter,

...In the current case, N [redacted] [the applicant] did not understand the Immigration Officer during much of the interview. Whether the Immigration Officer directly asked him about his deportation or subsequent re-entry is unknown to [redacted]. It is therefore impossible for [redacted] to willfully and fraudulently misrepresent these facts....

When [redacted] inquired about the status of his case in February 2001 and was informed by the Immigration Officer at that time that there was an issue of misrepresentation, [redacted] retracted such alleged 'misrepresentation' and gave full details of all of his entries into the United States, having realized only at the time of the status inquiry that he was requested to supply this information at the time of the interview....

Letter from [REDACTED], dated March 28, 2006.

The record does not support counsel's assertions. As the applicant stated in his declaration, dated February 2, 2001,

It was drawn to my attention...that I had lied to the authorities about my previous entries in the United States. I now wish, without excusing myself, to explain my reasons for not revealing this information....

...Please accept my sincere apologies. Allow me to give you the full and honest account of my movements. I entered in the United States for the first time illegally in September of 1981.... I left the country voluntarily to visit my family in September of 1987. I entered illegally again in January of 1988.... I was, however, apprehended in the Airport of El Paso, Texas and held until march of 1988, when I was deported. I re-entered in the United States through Tijuana, Mexico in November of 1988. I have been here since this time....

Letter from [REDACTED], dated February 2, 2001.

The applicant makes no mention of a lack of understanding of the questions presented to him at his I-485 interview. In fact, he fully admits that he misrepresented himself in order to avoid the ramifications implicit with a finding of inadmissibility. As such, despite counsel's assertions to the contrary, the AAO finds that based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act due to his willful misrepresentation on both the Form I-485 and during his I-485 interview.

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...

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. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

This matter arises in the California Service Center, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has 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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

Section 212(i) of the Act provides that a waiver is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant’s spouse is the only qualifying relative, and hardship to the applicant, their children and/or the applicant’s siblings who reside in Honduras cannot be considered, except as it may affect the applicant’s spouse.

The applicant first contends that his spouse will suffer emotional and psychological hardship due to the applicant’s inadmissibility. As stated by the applicant,

...My wife [the applicant’s spouse] has several serious health problems as testified to by the medical documents here included. She has suffered from **severe Migraines for almost eight years**. These have been classified in the hospital by CAT Scans as Chronic and is under treatment for this at this time. She suffers from Copper Tone Syndrome [sic] which affects her ability to pick up objects and the doctor has advised that she should not pick up the little children as this is dangerous for them. She needs surgery to try to correct this. Also, after a car accident, an MRI confirmed that she has two bulging disks and

this is needing attention now as for several years the pain has gotten worse and now has affected her walking. She also has bursitis in the right leg and problems with the sciatic nerve, all of which also limits her mobility.

Id. at 1.

A letter corroborating the above statements is provided by

As stated by Dr.

[The applicant's spouse] has bursitis of hip, migraine headaches, carpal tunnel syndrome (wrist), & low back pain. She has above multiple medical problems and physical limitations. Her husband [the applicant]...needs to be physically present/available her in Ocala, Florida, to take care of her and her children, and is the provider or earner for the family....

Letter from [REDACTED], MD, dated February 9, 2001.

Based on the record, the AAO has determined that the applicant's spouse would experience extreme hardship if she and the children remained in the United States while the applicant returned to Honduras. Due to the demands placed upon the family by her young children, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner, without the complete emotional, physical, financial and psychological support of the applicant. In light of her documented medical conditions, the applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. As counsel contends,

The country conditions of Honduras are deplorable. The country is faced with daily encounters with bandits, from kidnapping to murder. Economically...Honduras is one of the poorest and least developed countries in Latin America, with nearly two-thirds of Hondurans living in poverty.... Furthermore, in 1998, Hurricane Mitch hit Central America, including Honduras, leaving destruction to homes, hospitals, schools, roads, farms, and businesses. It is for these reasons that the United States government offers Temporary Protected Status to immigrants in the United States who originate from Honduras....

The availability of medical care in Honduras was largely damaged with Hurricane Mitch in 1998. Although it has been 8 years since the hurricane caused the damage, this country has been very slow in recuperating, especially in the medial area....

Supra at 2.

The U.S. Department of State references the following, in pertinent part, regarding country conditions in Honduras:

Large sections of the country, however, lack basic public services or even a governmental presence.

Crime is endemic in Honduras and requires a high degree of caution by U.S. visitors and residents alike. U.S. citizens have been the victims of a wide range of crimes, including murder, kidnapping, rape, assault, and property crimes. Sixty-two U.S. citizens have been murdered in Honduras since 1995; only twenty cases have been resolved. Four U.S. citizens were murdered in Honduras in 2007, six in 2006, and ten in 2005. Kidnappings of U.S. citizens have occurred in Honduras, including two incidents in 2007. Poverty, gangs, and low apprehension and conviction rates of criminals contribute to a critical crime rate, including horrific acts of mass murder. With a total of 3,855 murders in 2007, and a population of approximately 7.3 million people, Honduras has one of the world's highest per capita murder rates.

Criminals and pickpockets also target visitors as they enter and depart airports and hotels.... There have also been reports of armed robbers traveling in private cars targeting pedestrians on isolated streets.... The Honduran law enforcement authorities' ability to prevent, respond to, and investigate criminal incidents and prosecute criminals remains limited. Honduran police generally do not speak English.

Incidents of crime along roads in Honduras are common, including carjacking and kidnapping.

Medical care in Honduras varies greatly in quality and availability. Outside Tegucigalpa and San Pedro Sula, medical care is inadequate to address complex situations. Support staff facilities and necessary equipment and supplies are not up to U.S. standards anywhere in Honduras. Facilities for advanced surgical procedures are not available. Ambulance services are limited in major cities and almost non-existent elsewhere. Emergency services may be contacted directly through their local numbers.

Mosquito-borne illnesses are an ongoing problem in Honduras. All persons traveling in Honduras, even for a brief visit, are at risk of contracting malaria.

Severe air pollution, which can aggravate or lead to respiratory problems, is common throughout the country during the dry season due in large part to

widespread forest fires and agricultural burning.... Acute respiratory infections are also widespread; more than 100,000 cases are reported annually.

Country Specific Information-Honduras, U.S. Department of State, dated May 19, 2008.

Further, the U.S. Government continues to grant Hondurans living in the United States Temporary Protected Status (TPS), thus confirming the desperate conditions in Honduras.

Based on the problematic country conditions in Honduras, the substandard health care, and the granting of TPS, the AAO finds that the applicant's spouse would suffer extreme hardship were she to relocate to Honduras due to the applicant's inadmissibility. 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 spouse would face if the applicant were to return to Honduras, regardless of whether she accompanied the applicant or remained in the United States, the U.S. citizenship status of their children, the medical conditions suffered by the applicant's spouse, the applicant's apparent lack of a criminal record, the applicant's siblings, one who is a U.S. citizen and one who is a lawful permanent resident, a letter of support provided by the applicant's and his family's church on behalf of the applicant, and the passage of over twenty years since the applicant's immigration violation that lead to his deportation.

The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in seeking to adjust status to permanent residency, his initial entry without inspection, his unlawful entry after removal, and unauthorized presence in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's 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.