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U.S. Citizenship
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Services

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FILE:



Office: PHOENIX, AZ

Date:

NOV 04 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona and 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 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen. 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 and U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, April 17, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*, dated June 1, 2006.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant and her spouse; published reports regarding health conditions; a statement from the applicant's spouse's physician; a statement from the applicant's son's therapist; employment letters for the applicant and her spouse; a statement from one of the applicant's children; statements from friends; numerous bills; an evaluation from a licensed psychotherapist; tax statements for the applicant and her spouse; Form W-2s and earnings statements for the applicant and her spouse; and bank statements for the applicant and her spouse. 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.

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.

The record reflects that the applicant admitted at her interview to adjust status to lawful permanent resident that in 1995 she presented a false U.S. citizen birth certificate to the inspecting officer at the San Ysidro Port

of Entry. *Form I-485 Processing Worksheet*. The AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30, 1996, the opportunity to apply for a waiver. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3. While the applicant is, therefore, inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act, she is eligible to apply for a waiver of this misrepresentation because the incident occurred prior to September 30, 1996.

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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Hardship to the applicant's children will be considered only to the extent that it affects a qualifying relative. If 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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in the adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a naturalized United States citizen from Mexico. *See naturalization certificate*. The applicant's spouse has lived in the United States since he was four years old. *Statement from [REDACTED] MA, LISAC, Licensed Psychotherapist*, dated December 29, 2005. The record does not state what family members the applicant's spouse may have in Mexico, nor does the record address whether the applicant's spouse speaks fluent Spanish. According to the family's psychotherapist, any work that the applicant or her spouse may acquire in Mexico may not pay them a living wage. *Id.* The AAO notes that there is no documentation, such as published country conditions reports, that establishes the economic conditions and wages in Mexico to support these assertions. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *Id.* The family's psychotherapist also notes that the applicant's children will not be able to

receive the same educational opportunities in Mexico and that their lack of command of the Spanish language will pose a significant barrier to their academic success in the Mexican school system. *Statement from [REDACTED] MA, LISAC, Licensed Psychotherapist*, dated December 29, 2005. The record also includes a statement from the applicant's son's therapist noting that he has been receiving treatment for several months for behavioral issues. *Statement from [REDACTED] LCSW, Child, Adolescent and Family Therapist, Mohave Mental Health Clinic, Inc.*, dated May 31, 2006. The therapist notes that the applicant's son continues to work toward taking more responsibility for his emotions and actions, and toward building and maintaining a healthy and respectful relationship with his family. *Id.*

As previously noted, the applicant's children are not qualifying relatives for purposes of this case and any hardship they may experience will only be analyzed in the context of how it impacts the applicant's spouse. However, the AAO acknowledges the behavioral problems of the applicant's son and the treatment he is receiving and further notes that the disruptions connected with uprooting the applicant's family and moving to Mexico are likely to exacerbate the behavioral problems of the applicant's son. The AAO thus finds that when combined with the normal dislocations and upheavals of relocating, dealing with an already troubled child in an entirely new environment where he does not speak the language fluently, will constitute an extreme hardship for the applicant's spouse. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The AAO observes that the applicant and her spouse have two United States citizen children. *See birth certificates.* Although United States or lawful permanent resident children are not qualifying relatives for this particular case, the AAO, as previously noted, will consider the effect of such children upon the qualifying relative. The applicant's spouse states that he does not know if he could raise their children on his own. *Statement from the applicant's spouse*, dated May 30, 2006. He notes that he does not have anyone to assist him with childcare responsibilities and that he would be unable to pay his bills without support from the applicant. *Statement from the applicant's spouse*, dated December 22, 2005. The record, however, does not demonstrate that the applicant would be unable to assist her family financially from a location other than the United States, thus allowing her spouse to hire someone to help him take care of their children.

According to the family's psychotherapist, the applicant's spouse suffers from Major Depressive Disorder, Polysubstance Dependence Sustained Full Remission, Nightmare Disorder, and Acute Stress Disorder. *Statement from [REDACTED] MA, LISAC, Licensed Psychotherapist*, dated December 29, 2005. The applicant's spouse states that he would be heartbroken if he were separated from the applicant. *Statement from the applicant's spouse*, dated May 30, 2006. The record includes medical documentation stating that the applicant's spouse suffers from a hair loss condition to the scalp and face called alopecia areata. *Statement from [REDACTED] P.A.-C. and [REDACTED] D.O., Mohave Skin & Cancer*, dated December 13, 2005. This condition is associated with stress and typically occurs in the areas of the scalp and face. *Id.* While, this condition tends to resolve in a great majority of cases, it often recurs when individuals who suffer from this condition experience significant levels of stress. *Id.* The physicians treating the applicant's spouse indicate he suffers from recurrent alopecia that is caused by the stress of the applicant's immigration case and they have advised him to talk with his primary care physician about dealing with his stress. *Id.* When looking at the totality of the circumstances, specifically the diagnosis of Major Depressive Disorder combined with the

applicant's spouse's recurrent alopecia due to stress, as well as the applicant's spouse's belief that he would be unable to raise his children, one of whom has behavioral issues, on his own, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which she now seeks a waiver, her periods of extended unlawful residence in the United States along with unauthorized employment, and her entry without inspection.

The favorable and mitigating factors are the extreme hardship to her spouse if she were refused admission, her long-term and supportive relationship with her spouse and children, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were 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.