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

#2

PUBLIC COPY

[Redacted]

FILE: [Redacted] Office: PHOENIX, AZ Date: **SEP 17 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.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act 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 remain in the United States and reside with her permanent resident husband and three children.

The district director concluded that the applicant 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 April 20, 2006.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated July 1, 2006.

The record contains a brief from counsel; copies of documents in connection with the applicant's husband's medical treatment and physical condition; statements from the applicant's daughters; copies of documents in connection with the applicant's son's boxing activities; documentation associated with the applicant's ownership of a home in the United States; a copy of the title for the applicant's vehicle; a psychological evaluation of the applicant's family conducted by a licensed psychotherapist; evidence that one of the applicant's daughters is pregnant; letters from associates of the applicant attesting to her good character; a copy of the applicant's birth certificate; copies of tax records for the applicant; documentation of the applicant's and her husband's employment; copies of permanent resident cards for the applicant's husband and children; a copy of the applicant's marriage certificate; copies of the applicant's family photographs, and; documents in the Spanish language without English translations. The entire record was reviewed and considered in rendering this decision.

It is noted that the applicant submitted several documents in the Spanish language without accompanying translations into English. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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 in 1996, the applicant attempted enter the United States by presenting a border crossing card belonging to another individual. She was apprehended and voluntarily returned to Mexico. Accordingly, the applicant attempted to gain admission into the United States by fraud or willfully misrepresenting a material fact (her true identity.) Accordingly, the applicant 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). The applicant does not contest her inadmissibility on appeal.

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 the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband would possibly remain in the United States if the applicant departs.

Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel* at 9. Counsel explains that the applicant's husband was injured in a prior job, he collects long-term disability, and thus his employment options would be limited in Mexico. *Id.* at 2. Counsel provides that the applicant's husband has concern regarding the medical care he may receive in Mexico should he relocate there. *Id.* at 3. Counsel indicates that the applicant's household earned approximately \$25,000 in 2005, suggesting that their economic resources are limited. *Id.* at 2. Counsel states that the applicant's husband has been in the United States since 1983, when he was age 17. *Id.* Counsel provides that the applicant has three children who are permanent residents in the United States, and that though they are not qualifying relatives, their hardships may be considered to the extent that they impact the applicant's husband. *Id.* at 6-7. Counsel further highlights that the applicant serves as a positive role model in her community. *Id.* at 8.

The applicant submitted an evaluation of her family members conducted by a licensed psychotherapist, [REDACTED]. While the evaluation from [REDACTED] does not represent treatment for mental health issues of the applicant's family, it provides a background into the family's history and challenges facing the applicant's husband. For example, [REDACTED] stated that the applicant's husband has emotional distress due to the possibility that the applicant may be required to depart the United States. *Psychological Evaluation*, dated February 6, 2006. [REDACTED] provided that the applicant's daughters and son are all experiencing significant emotional difficulties due to the applicant's possible departure. *Id.* at 2-8. She diagnosed the applicant's husband with Dysthmic Disorder, Acute Stress Disorder, Nightmare Disorder, and Phase of Life Problem. *Id.* at 7. [REDACTED] described many challenges the applicant's husband would face should he attempt to relocate to Mexico. *Id.* at 8-11.

Upon review, the applicant has shown that her husband will experience extreme hardship should she be prohibited from remaining in the United States. This finding is primarily based on the long duration that the applicant has resided in the United States with her husband and children as a close family unit, and the length of time the applicant's husband has resided and built his life in the United States. *See Salcido-Salcido*, 138 F.3d at 1293.

Should the applicant depart the United States, and her husband remain, her husband would experience extreme hardship. The applicant's husband has been married to the applicant since June 18, 1985, for 23 years. The record supports that they have lived as a family in the United States since at least 1999, and for an unspecified duration prior to the time.<sup>1</sup> The applicant's daughters and son were granted employment authorization in May 2002, and the record suggests that they have been in the United States residing with the applicant and her husband at least as early as 1999. The applicant's children are now ages 16, 20, and 21, yet they still reside with the applicant and her husband, along with the applicant's two grandchildren.<sup>2</sup> The applicant and his wife

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<sup>1</sup> The record reflects that the applicant was in the United States prior to departing in 1996, and she reentered in 1999. The I-130 petition filed on her behalf indicates she first entered in 1988.

<sup>2</sup> It is noted that one of the applicant's daughters was pregnant as of July 1, 2006, and thus a third grandchild may reside with the applicant and her husband.

purchased their home in 1999. The evaluation from [REDACTED] reflects that the applicant's husband is experiencing significant emotional distress regarding the prospect that the applicant will be prohibited from remaining in the United States. Given the long duration of residence as a close family in the United States, the AAO finds that separating the applicant from her husband and children would cause her husband substantial emotional suffering.

The AAO further acknowledges that the applicant's husband's prior workplace injury has reduced his employment options. In 2005, the applicant's household's income was approximately \$26,000, including earnings from the applicant and her husband. *2005 IRS Form 1040A*. A June 2005 letter verifying the applicant's husband's employment reflects that he earned approximately \$400 per week as a taxi driver, which is equivalent to approximately \$20,000 per year. *Letter from [REDACTED]*, dated June 13, 2005. The applicant earned \$9.31 per hour working full time for Landis Plastics during the same period. *Letter from [REDACTED]*, dated May 27, 2005. The applicant's mortgage totals \$1,366.28 per month, an amount likely difficult to pay with only her husband's income, possibly causing her husband to sell their house and change to more affordable housing. *Wachovia Mortgage Statement*, dated May 25, 2006. While the applicant has not indicated whether her daughters or son work to supplement the household income, it is evident that the applicant's husband would endure some hardship due to losing the economic support of the applicant in the United States.

The record contains references to hardships to the applicant's three children. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative.

The AAO recognizes that the applicant's husband will endure significant emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in his daughters' and son's loss of the applicant's daily presence. This hardship is duly considered in assessing the total hardship to the applicant's husband.

The applicant's husband would further endure hardship due to caring for his 16-year-old son alone. However, the applicant has not shown that her two daughters, age 20 and 21, or their grandchildren require direct care from the applicant or the applicant's husband.

The applicant has shown by a preponderance of the evidence that the hardships to her husband should he remain in the United States without her, considered in aggregate, constitute hardship that is greater than that which would ordinarily be expected of family members separated as a result of deportation. *See e.g., Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The AAO further finds that the applicant's husband would experience extreme hardship should he return to Mexico. He has resided in the United States for approximately 23 years, since he was age 17, and he has

raised his children here for at least the last 9 years. He owns a home in the United States and has stable employment that accommodates his physical status after a workplace injury. Thus, the applicant's husband has strong ties to the United States. The applicant's children have each lived in the United States as a family unit for the majority of their lives, thus they would endure significant hardship should they relocate to Mexico or live in a separate country from their parents, which would reasonably have an emotional impact on the applicant's husband. If he relocated to Mexico, the applicant's husband would be compelled to relinquish his employment and reestablish a career in a weaker economy where he would be unable to earn comparable compensation, and he would possibly have increased difficulty securing suitable employment with his physical limitations.

The applicant has shown by a preponderance of the evidence that the hardships to her husband should he relocate to Mexico, considered in aggregate, constitute hardship that is greater than that which would ordinarily be expected of family members who relocate abroad as a result of the inadmissibility of a close family member. The AAO bases this finding primarily on the applicant's husband's long duration of residence in the United States, and his significant family and economic ties to the country. *See e.g., Hassan, 927 F.2d at 468.*

Based on the forgoing, the AAO finds that the applicant's husband will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if she is required to depart the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

Her initial, and possibly subsequent, entries without inspection, many years of unauthorized presence and her knowing attempt to enter the United States using the border crossing card of another individual.

The positive factors in this case include:

The applicant has significant family ties to the United States, including her husband and three children; the applicant's husband would suffer extreme hardship if the applicant is compelled to depart the United States; the applicant cares for her three permanent resident children and she assists in the care of her grandchildren; the applicant maintains employment in the United States and pays taxes; the applicant has not been convicted of any crimes, and; the applicant participates in her community, such as engaging with her son's boxing center.

The positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

**ORDER:** The appeal is sustained.