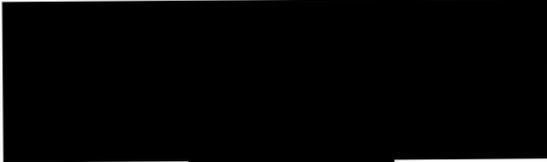




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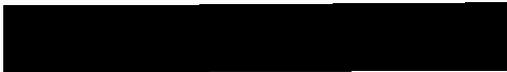


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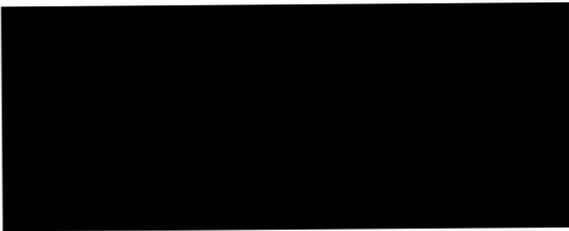
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(a) (6)(C)

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, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED] (Mrs. [REDACTED]), is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for seeking to procure admission to the United States by fraud or willful misrepresentation. 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 husband, [REDACTED] Mr. [REDACTED], and their three children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, her husband, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated March 2, 2005.

On appeal, counsel for the applicant asserts that Mrs. [REDACTED] has shown that her husband will suffer extreme hardship, and that actual injury would result to her U.S. citizen spouse and minor child if she were not allowed to adjust status. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated March 17, 2005. Also on appeal, the applicant submits statements from her husband and two eldest children and a Psychological Assessment in support of her assertions that her husband will suffer psychologically, emotionally and financially if she is not permitted to reside with him and their children in the United States, particularly in light of the couple's 25-year relationship, the family's strong ties to the community in the United States and the intense distress the family would suffer if separated from Mrs. [REDACTED]. *Brief in Support of Appeal*, submitted by [REDACTED] including *Affidavits of [REDACTED] and [REDACTED]* dated April 11, 2005; *Catholic Charities Psychological Assessment*, dated April 1, 2005. Additional evidence submitted in support of Mrs. [REDACTED] waiver request (Form I-601) includes birth certificates of the couple's three children, born in 1982, 1991 and 1994 respectively; proof of school enrollment for the two younger children; employers' letters confirming employment for both Mr. [REDACTED] and Mrs. [REDACTED]; and a statement from Mr. [REDACTED] explaining how neither he nor their children could function without Mrs. [REDACTED]. *Attachments to Form I-601*, submitted February 10, 2004. The record also contains tax and employment records dating from 1997 and recent records indicating that in 2002 the couple's joint income was \$24,359, and that in 2003, Mrs. [REDACTED] salary was approximately \$250 per week. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States in 1988 by presenting a false document. As a result of this prior misrepresentation, the applicant was found to be inadmissible to the United States. The applicant does not contest this finding, but points out that the District Director's decision incorrectly states the date of attempted entry as 1998.

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.

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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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. In examining whether extreme hardship has been established, 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).

Hardship the applicant herself experiences due to removal or inadmissibility is not a listed factor in section 212(i) waiver proceedings. **Moreover, the applicant’s children are not qualifying relatives. However,** hardship suffered by the applicant or the children will be considered to the extent that it results in hardship to

a qualifying relative in the application, in this case, the applicant's U.S. citizen husband. *Matter of Recinas, et al.*, 23 I&N Dec. 467, 471 (BIA 2002).

This matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, regarding consideration of a request for suspension of deportation under former section 244(a) of the Act, 8 U.S.C. § 1254(a) (1994), "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). The hardship suffered by a U.S. citizen or permanent resident child due to separation from parents must be considered and may be sufficient to warrant suspension of the parents' deportation. *Id.* at 1422-23. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The extreme hardship standards applied when considering a waiver are the same as those applied in suspension cases. *Matter of Kao & Lin*, 23 I&N Dec. 45, 49 n.3 (BIA 2001). In the context of section 212(i) waiver proceedings, the BIA held that "[a]lthough it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion." *Cervantes-Gonzalez, supra*, at 565.

One of the central purposes of the waiver is to provide for the unification of families and avoid the hardship of separation. *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1979); see also *Cerrillo-Perez, supra* at 1422 ("[t]he legislative history of the Immigration and Nationality Act clearly indicates that the Congress intended to provide for a liberal treatment of children and was concerned with the problem of keeping families of United States citizens and immigrants united" (citation omitted)). Failure to weigh all family factors is reversible. *Delmundo v. INS*, 43 F.3d 436, 442-43 (9th Cir. 1994). Although in 1996 Congress intentionally limited the category of qualifying relatives in 212(i) proceedings, and neither hardship to the applicant nor to the applicant's children is a listed factor, where hardship suffered by such family members affects the potential level of hardship to their qualifying relative in the application, it may also be considered. *Matter of Recinas, et al.*, 23 I&N Dec. 467, 471 (BIA 2002).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he accompanies her and resides in Mexico or in the event that he remains in 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 record reflects that Mr. [REDACTED] was born in Mexico in 1963; the applicant was born in Mexico in 1965. Based on information they provided for the Psychological Assessment, they met when they were teenagers attending the same school in Mexico City when the applicant was 13; when she became pregnant at

the age of 16, their families tried to separate them and Mr. [REDACTED] was sent to the United States to live with his brother. *Psychological Assessment, supra*. In spite of opposition from their families, he returned to Mexico and the couple married in 1982; their first child, Amada, was born in Mexico the same year. Since that time, his family has embraced his wife. *Id.* In 1988 Mr. [REDACTED] moved to the United States to join his siblings, and a few months later Mrs. [REDACTED] and [REDACTED] joined him. They have resided in the United States since then. Mr. [REDACTED] became a U.S. citizen in 1997; [REDACTED] is a lawful permanent resident. Their other children were born in California, Angel in 1991, and [REDACTED] in 1994, where they continue to live and attend school. Mr. [REDACTED] states that his entire family lives in the United States, and they are very close; Mrs. [REDACTED] states that her mother and two siblings still live in Mexico; she communicates with them regularly, but has not seen them since 1988. *Id.* Mr. [REDACTED] works as a chef, and Mrs. [REDACTED] works in food service at a retirement home. The most recent tax returns in the record indicate a joint income of \$24,359 in 2002 and \$18,000 in 2001. A letter of reference from Mr. [REDACTED]'s employer (undated, submitted with the applicant's I-601 in February 2004) states that he worked as a head chef manager for [REDACTED] since July 1996 and earned a salary of \$52,000 per year. Mr. [REDACTED] later explained that the restaurant where he had been working closed and he lost that job in January 2005; he was unemployed for approximately two months and stated that if his wife and daughter had not been working, the family would have been in serious financial straits during that time. *See Psychological Assessment, supra*.

The first part of an analysis under *Cervantes* requires the applicant to establish extreme hardship to her husband, Mr. [REDACTED] in the event that he relocates with her to Mexico.

Mr. [REDACTED] has indicated that moving to Mexico is not an option, as his children have the right to remain in the United States where they can achieve their potential. *Brief in Support of Appeal*, submitted by [REDACTED], dated April 11, 2005. The couple's elder daughter, [REDACTED] also states that her father has indicated many times to his children that, as a naturalized U.S. citizen, he has severed allegiance to Mexico, and that returning to Mexico is not an option; she adds that he is concerned about her two younger siblings, Angel, 13, and [REDACTED] 10, and that although her father believes strongly that they "deserve the love and moral support that their mother can provide," he will never consent to their being raised and educated in Mexico; she concludes that she has observed her father continue to deteriorate and become more isolated and depressed and that to deny a waiver to her mother means the disintegration of the family unit, which would be devastating to her father and siblings. *Affidavit of [REDACTED]* dated April 11, 2005. Angel, the couple's 13-year-old son states that he is in middle school, where his classmates all speak English; his knowledge of Spanish is very limited, he has never visited Mexico, is not acquainted with Mexican culture or traditions and "will never live in Mexico;" he confirms that his **mother's deportation would cause many emotional problems in his life and in the life of his father.** *Affidavit of [REDACTED]* dated April 11, 2005.

The record reflects that Mr. [REDACTED] and the applicant moved to the United States in 1988. He has no relatives or community ties to Mexico, other than his wife's family, as his mother and five siblings all reside in the United States; he stated that he had a very close relationship with his parents and with his siblings when he was growing up, and that they all remain close. *See Psychological Assessment, supra*. He also indicated that his wife holds an important place at the center of his extended family as well as within their own nuclear family. *Id.* He, his wife and elder daughter, [REDACTED], work to support the household. [REDACTED] graduated from high school and works as a medical assistant; she and her five-year old daughter live with the family. His two

younger children were born and raised in the United States and are in elementary and secondary school respectively. He states that if he were to move to Mexico to avoid separation from his wife, and to avoid his children's separation from their main caretaker, the disruption to him and his family would be intolerable for him; he indicated that the family would "break" as he would have to leave [REDACTED] behind and could possibly leave his U.S. citizen children behind as well. Regarding financial hardship that a move to Mexico would cause, although he would suffer economic detriment, as both he and his wife would lose their current incomes, there is nothing in the record to indicate that they would be unable to find suitable employment or would be unable to support their family in Mexico.

If he moved with his children to Mexico, he would be forced to disrupt their lives. U.S. courts have held that "imposing on *grade school age citizen children, who have lived their entire lives in the United States*, the alternatives of either . . . separation from both parents or removal to a country of a vastly different culture" must be considered in a determination of whether extreme hardship has been shown (*Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983) (emphasis added), noting that "there is, of course, a great difference between the adjustment required of . . . infants and that of grade school age children." *Id.* at 187, fn 16; *see also Matter of Kao & Lin*, 23 I & N Dec. 45 (BIA 2001) (finding extreme hardship for a 15 year old, who had lived her entire life in the United States and was completely integrated into her American lifestyle, if she were uprooted upon her parents' deportation). Although those cases involved a determination of whether the children themselves would suffer extreme hardship, and in this case the children are not qualifying relatives when considering extreme hardship, hardship to the children is relevant to the extent that it causes hardship to the qualifying relative. *See Matter of Recinas, et al., supra* (where hardship suffered by family members affects the potential level of hardship to their qualifying relative in the application, it may also be considered).

The evidence in this case, when reviewed in light of the *Cervantes-Gonzalez* factors, indicate that if Mr. [REDACTED] chose to move to Mexico to avoid separation from his wife, he would be separated from all of the members of his extended family, with whom he maintains close ties; he would also be separated from his adult daughter and her five-year-old child, both of whom form part of his nuclear household; he has no family remaining in Mexico other than his wife's relatives; he has resided and worked in the United States for the past 19 years, and he would lose his ties to the community and his employment; he would either have to uproot his two U.S. citizen children from their school or leave them behind, and he has indicated that either option would be devastating for him. The AAO finds that these factors, when considered in the aggregate, would represent an extreme hardship to Mr. [REDACTED] if he chose to relocate to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship to her husband in the event that he remains in the United States separated from the applicant.

In support of his wife's application for a waiver of inadmissibility, Mr. [REDACTED] said he had been requested to submit a statement indicating how he and his family would suffer if his wife were to be deported. He asked, "How does one explain the loss of a loved one?" and stated that he and his children would not be able to function and that without his wife's income, he feared that he would not be able to work and earn enough to care for his children, pay for childcare and other expenses and also support his wife in Mexico. *Statement of [REDACTED]* February 9, 2004. He submitted an additional statement on appeal, adding that he is suffering from severe anxiety and depression and is in the process of obtaining medical treatment for severe stress, that he has difficulty sleeping, and is using over the counter sleep medication for the first

time, and is unable to function properly at work. *Brief in Support of Appeal*, submitted by [REDACTED] dated April 11, 2005. The couple's daughter, [REDACTED] also states that her father has been suffering emotionally and psychologically since her mother was denied a waiver, that he has difficulty concentrating and that he is sad and cries a lot, does not follow through with plans with the family, and lives in constant fear that her mother will be picked up by an immigration officer. *Affidavit of* [REDACTED], dated April 11, 2005.

The Psychological Assessment in the record, prepared by a Registered Psychologist, is based on interviews with Mr. and Mrs. [REDACTED] and their three children, and supports the conclusions of the family members noted above. It provides a detailed description of the couple's history together and the family members' interactions, noting that the love and affection among them is evident. The psychologist concludes that the family has been under intense distress since the denial of Mrs. [REDACTED] request for permanent residency, that all of the family members are experiencing significant symptoms of depression and anxiety over the possibility that Mrs. [REDACTED] will be deported, and that "seeing each other in pain makes it more difficult for each of them to cope," adding:

Coping with the distress of the children is particularly difficult for all of the adults in this family. Coping with his family's feelings of depression and anxiety is difficult for [Mr. [REDACTED]]. . . . If the prospect of deporting [Mrs. [REDACTED]] is already having such a strong negative impact on this family, her actual deportation would be even more destructive. The emotional trauma for [Mr. [REDACTED]] and the children could cause more severe depression or anxiety symptoms. . . . It is clear that [Mr. [REDACTED]] is very attached to his wife . . . that he is very emotionally dependent on her. When asked how his life would be different without [her], [he] stated, "How can you live without eating? It would be like I died." . . . Because [he] works outside of the home for such long hours, the children spend the majority of their time with [Mrs. [REDACTED]]. She serves as their primary source of emotional stability and is their primary source of childcare. . . . [Mr. [REDACTED]] stated, "It would be impossible [if his wife were deported]. If that happens, this family is gonna break [sic]. I am not leaving Amada alone here. I cannot ask Angel to give up his dreams. If this happens we might live, but we would not be o.k."

The psychologist adds that it is her clinical opinion that separation from Mrs. [REDACTED] would cause a grave emotional and physical hardship to Mr. [REDACTED] and the children. After the administration of a series of tests to assess clinical disorders, a diagnosis of "Adjustment Disorder with Anxiety" was made for Mr. [REDACTED] and the couple's son; and a diagnosis of "Adjustment Disorder with Mixed Anxiety and Depressed Mood" was made for Mrs. [REDACTED] and their two daughters.

Statements from Mr. [REDACTED] and his wife and children, the conclusions of the Psychological Assessment in the record and the specific circumstances of the 29-year relationship between Mr. [REDACTED] and the applicant indicate an unusually strong interdependent relationship. Although there is no independent confirmation from a medical doctor that Mr. [REDACTED] is receiving medical treatment for stress or depression, his statements and those of other family members support a conclusion that he is unusually depressed and anxious about the possibility that the family will be divided. His statements and those of family members cannot be discounted. Statements in affidavits must be accepted as true unless they are

“inherently unbelievable.” *Gutierrez-Centeno v. INS*, 99 F.3d 1529, 1534 n.12 (9th Cir. 1996). There is no such indication or allegation in this case. *See also Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). The psychologist’s diagnosis that Mr. [REDACTED] was suffering from “Adjustment Disorder with Anxiety” and conclusion that the family is and will be devastated emotionally by separation provides added weight to the statements of family members.

Regarding the financial hardship Mr. [REDACTED] would suffer in the absence of the applicant, the above enumerated statements and financial records indicate that Mr. [REDACTED] has generally been the primary financial support for his family, and that the family has also depended on both incomes in the past. Mr. [REDACTED] stated that he recently lost his job and depended on income from his wife and daughter and that he does not know how he will manage financially without two incomes. The record indicates, however, that he has earned over \$50,000 annually in the past, and there is no evidence that he cannot support his family without added income from the applicant, although they will clearly suffer some financial detriment without Mrs. [REDACTED] income.

If Mrs. [REDACTED] were not granted a waiver of inadmissibility, Mr. [REDACTED] would also need to take over all of the shared responsibilities of taking care of their two younger children. The evidence indicates that no one factor related to the increased financial, personal and familial burdens that Mr. [REDACTED] would face may represent an extreme hardship. Based on the record, however, an examination of the unique facts of his individual case reflects that his relationship with his wife, which began approximately 29 years ago, is one of mutual dependence and love. The evidence indicates that his emotional and personal well-being are exceptionally dependent on this relationship as well as the relationship of his children to their mother. Mr. [REDACTED] clearly articulated that separating his children from their mother would be devastating for her as well as the children. He and his children are showing physical signs of distress over potential separation from Mrs. [REDACTED]. The conclusion of the Psychological Assessment in the record that “separation from Mrs. [REDACTED] would cause a grave emotional and physical hardship on Mr. [REDACTED] and the children” confirms his statements and those of his children regarding how much they would suffer in her absence. Because of Mr. [REDACTED]’s dependency on the welfare of his children and his wife, the hardship separation would cause them affects the potential level of hardship Mr. [REDACTED] would suffer. *See Matter of Recinas, et al., supra.*

Based on the above evidence, the applicant has established that the cumulative general emotional effect that her separation from her family would have on Mr. [REDACTED] combined with the increased financial, personal and familial burdens that he would face, render the hardship in this case beyond that which is normally experienced in most cases of removal or inadmissibility. A discounting of the hardship Mr. [REDACTED] would face in either the United States or Mexico if his wife were refused admission is not appropriate. Although any one factor alone may not be extreme, a consideration of the entire range and combination of factors concerning hardship in this case takes the case beyond those hardships ordinarily associated with removal or inadmissibility. *See Matter of O-J-O, supra.*

Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors and Ninth Circuit law, cited above, the AAO finds that the applicant has established that her husband would suffer extreme hardship if his wife's request for a waiver of inadmissibility were denied. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 AAO must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." See *Matter of Mendez-Morales*, *supra* at 300 (BIA 1996) (citations omitted).

The adverse factors in the present case are the applicant's prior misrepresentation, for which she now seeks a waiver, and years of unauthorized presence. The favorable and mitigating factors are the applicant's otherwise clean record, the extreme hardship to her husband if she were refused admission, her long-term supportive relationship with her husband and three children (two of whom are U.S. citizens and one of whom is a lawful permanent resident), and her consistent record of employment and payment of taxes.

The AAO finds that, although the immigration violation committed by the applicant was 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.