U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: AUG 16 2004

IN RE: [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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, 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 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 to the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident of the United States. 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 with his lawful permanent resident mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 9, 2001.

On appeal, counsel clarifies that the applicant resides with his mother and his sister in San Ysidro, California, in order to provide care for his mother, but uses his daughter's Stockton, California mailing address because his daughter reads and understands English. Counsel contends that the applicant's mother relies on him for medical care as she suffers from advanced Alzheimer's disease. *Letter of Counsel*, dated January 8, 2002.

The record includes copies of the resident alien cards of the applicant's mother and sister; an affidavit of the applicant's sister, dated January 7, 2002; letters from mental health professionals and physicians treating the applicant's mother; copies of medical records for the applicant's mother; an affidavit of the applicant's daughter, dated March 29, 2000; a copy of the naturalization certificate of the applicant's daughter; letters of support and copies of tax documents for the applicant's sister. The entire record was considered in rendering this decision.

The record reflects that on November 18, 1973, the applicant used a counterfeit resident alien registration receipt card and falsely represented himself to be a lawfully immigrated alien in order to obtain admission to the United States.

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.

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 himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's parent. 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 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's mother would suffer extreme hardship as a result of the departure of the applicant from the United States. The record demonstrates that the applicant's mother requires twenty-four hour per day care as she suffers from Alzheimer's disease and is unable to groom, feed or bathe herself. *Letter signed by Dr. Cantu-Reyna to the County of San Diego Health and Human Services Agency*, dated November 16, 2001. Although the applicant's sister resides with their mother, she is unable to address all of the needs of their mother on her own because she does not drive and cannot lift her mother by herself. *Letter from Christopher W. Yun*, dated January 8, 2002. The applicant's sister also works on a part-time basis and since the applicant's mother requires constant care, someone needs to remain with her while the applicant's sister is at work. The applicant's sister explains that the applicant is the only member of the family able to provide this care because other family members work and have families of their own. *Affidavit of Rosa Lopez*, dated January 7, 2002. The applicant's family cannot afford to hire someone to care for their mother on a full-time basis and the husband of the applicant's mother left her in 2001. *Letter from Christopher W. Yun.*

The situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant's mother is incapable of maintaining her well-being in the absence of the applicant.

The grant or denial of the above 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 to the applicant's mother and the passage of more than thirty years since the applicant's immigration violation. The unfavorable factors in this matter are

the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. Further, the AAO notes that the applicant has a criminal record in this country. The record reflects that in 1990, the applicant was convicted of fraud in obtaining aid and was sentenced to three years of probation and ordered to pay restitution in the amount of $3,420.50. The record further reflects that on January 7, 1986 and July 22, 1987, the applicant was convicted on charges of driving under the influence of alcohol (DUI). When immigration officials interviewed him on November 10, 1987, the applicant admitted that he was arrested on DUI charges in 1984 and 1985 as well. The AAO notes that the record contains a letter from Alcoholics Anonymous attesting to the rehabilitation of the applicant.

While the applicant has a criminal history in the United States and made a willful misrepresentation in order to obtain admission to this country, the AAO notes that over 30 years have elapsed since the applicant's immigration violation and that the applicant has maintained a clean record for approximately 14 years. The AAO finds that the hardship imposed on the applicant's mother as a result of his 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), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the waiver application is approved.