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



U.S. Citizenship
and Immigration
Services

H 2

FILE: [REDACTED] Office: PHOENIX DISTRICT OFFICE

Date: OCT 28 2005

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix denied the waiver application and the matter 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 wife 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 her lawful permanent resident husband.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director* (April 16, 2003). The entire record was reviewed in rendering this decision.

The record indicates that, in testimony before the district office, the applicant admitted to attempting to use a fake I-551 Resident Alien Card to gain admission in 1980, that the I-551 was confiscated at the port of entry and that the applicant was returned to Mexico. See Form I-648 Memorandum Record of Interview Made in Examination Section.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) provides:

In general.—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 spouse. 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.

This matter arises in the Phoenix district office, 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.

On appeal, counsel contends that the applicant and her family would suffer both economic and psychological damage if the applicant were deported. In support of his contention, counsel submitted a memorandum of law and an affidavit from an Arizona licensed psychologist who interviewed the applicant and several members of her immediate family, including the applicant's husband. Counsel also submitted copies of the section on Mexico in the United States Department of State Country Reports on Human Rights Practices 2000. The record also includes numerous letters from friends and acquaintances of the applicant, family tax records, birth certificates of the applicant's U.S. citizen children, marriage certificate and translation of the applicant and her spouse, a newspaper article about the death of the daughter of the applicant and her spouse in 2002.

The entire record has been reviewed. With regard to extreme hardship, information about difficulties faced by the applicant and other family members will be considered only in how those difficulties affect the applicant's husband, the only qualifying relative.

The applicant's husband has been married to the applicant since 1977. They have resided together, continuously, in the same town, Bagdad Arizona, since 1985. They have raised five children in the United States; one is deceased, two live with the applicant and her spouse while the other two live nearby. The family of the applicant's husband also lives in Bagdad. While the applicant's family still lives in Mexico, she has not seen them in twenty years.

The record indicates that the applicant and her spouse have very strong church, employment and community ties that have been developed over more than twenty years in Bagdad, Arizona. See *Letters of Support*, TAB "B," 1-12, submitted with I-601 (Application for Waiver of Admissibility). His family is no longer in Mexico and he has not been in the country in twenty years. He works for the Bagdad sanitation department. He is over 60 years old. He does not drive. Three of his surviving children are now young adults, dependent upon the family but with lives of their own. His oldest daughter Candy, who is married and lives in a house close to the applicant and her husband, shops for the family, balances the family checkbook and drives her parents places when needed. The youngest daughter, Lydia, is still living with her parents and attending high school. See *Affidavit of Libby Howell*, #7 through #10. It is also important to consider the effect that the death of the second oldest daughter Alandra in 2002 has had on the family, creating anxiety and sadness among family

members, causing both the applicant's husband and daughter Lydia to spend more time at home and creating the need for daughter Candy to assume a greater leadership role. *See Affidavit of Libby Howell.*

The applicant's husband would face economic difficulties, the loss of the life he has built for himself and his family, and separation from most of his family, including daughter [REDACTED] whom he greatly depends upon if he went to live with his wife in Mexico. He would face separation from his wife of 28 years and the difficulty of seeing the pain of separation that his children would feel if he remained in the United States. Regardless of whether he chose to live in Mexico or the United States, the applicant's removal from the United States would cause her husband to endure the pain of separation and the loss of a long established life while still recovering from the death of one of his daughters. The cumulative effect of the applicant's departure from the United States amounts to extreme hardship to her husband.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien 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 adverse factor in the present case is the fraud for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's husband and the upheaval to the applicant's entire family if she were removed and her otherwise clean background and positive relationship with the community within which she has lived and raised a family for twenty years.

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.