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

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: APR 04 2007

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:

SELF-REPRESENTED

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 with his lawful permanent resident citizen wife.

The district director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), finding that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative if the waiver was denied. *Decision of the District Director*, dated December 6, 2004.

The record contains a Form I-485 and its supplement; biographic information forms; a Form I-864, Affidavit of Support, executed by the applicant's wife on his behalf on June 18, 2001; copies of Los Angeles County Business Licenses; a Public Health Operating Permit; income tax records; bank statements; a medical report; court documents; a copy of the applicant's Employment Authorization Card and driver license; a Form I-601; a letter from the applicant's wife, dated December 20, 2001; a letter from the applicant, dated June 30, 2001, regarding his fraudulent permanent resident card; a copy of the permanent resident card of the applicant's wife; a copy of a marriage certificate; copies of birth certificates and immunization records; copies of photographs; documents relating to real property; and other evidence. 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 on or about February 22, 1981, the applicant entered the United States using a counterfeit I-551. The applicant executed a sworn statement on June 30, 2001 in which he stated that he purchased a green card from a legal office in Los Angeles, California. *Statement from Applicant*, dated

June 30, 2001. He thought this was the way to acquire a green card, and that he was acting legally. *Id.* The applicant used the green card to enter the United States. *Id.* Based on the foregoing, the applicant entered the United States by fraud, and made a willful misrepresentation of a material fact (his identity and immigration status) in order to procure entry into the United States. 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).

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 to the applicant or to his children is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative in the application, which in the present case is the applicant's wife. 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).

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). *Matter of Cervantes-Gonzalez* 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. *Id.* at 566.

> 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).

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, "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.

It has been consistently held that mere economic detriment, without more, is not enough to make out the extreme hardship required by the statute. (*Matter of Sipus*, 14 I&N Dec. 229, 231 (BIA 1972)), citing *Kasravi v. INS*, 400 F.2d 675 (C.A. 9, 1968); *Kwan Shick Myung v. INS*, 368 F.2d 330 (C.A. 7, 1966). In *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996) the BIA stated that: "[a]lthough economic factors are relevant in any analysis of extreme hardship, economic detriment alone is insufficient to support a finding of extreme hardship within the meaning of section 244(a) of the Act." In *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981), the Supreme Court upheld the BIA finding that economic detriment alone is insufficient to establish extreme hardship.

The record reflects the following. The applicant's wife stated that she has been married to the applicant for 23 years and that he is the father of her seven children. *Statement from Applicant's Wife*, dated January 20, 2004. She stated that their children require the applicant's care, love, and support. *Id.* The applicant's wife stated that her husband is the "one who is working for us" and who "takes care [of] us." *Id.* She states that they own a small business and that her husband is the principal worker there and that if he leaves the country the business will fail, impacting the financial support of the family. *Id.* She states that they are buying the house where they live, and they will lose the house if her husband leaves the country. *Id.*

The applicant contends that his wife will suffer hardship if he is unable to remain in the United States. He states that:

> [H]is wife is a permanent resident and "can stay here in the United States just fine but, there [are] some problems[;] my wife does not work and we have young children that I am the sole supporter [of] and we have our property that I am paying since my wife does not work.

Letter from Applicant, received on January 5, 2005. The applicant states that he has lived in the United States for more than 30 years and that he has no ties to Mexico. *Id.*

The record indicates that the ages of the applicant's sons and daughters range from 10 to 29 years old; six of his children were born in the United States. *Form I-485.* The record indicates that El Regalo de Michoacan, of which the applicant is the proprietor, earned $28,440 in 2001; this figure is reflected as the self-employment income of the applicant. *Unsigned Form 1040 U.S. Individual Income Tax Return 2000.* The Form 1040 for 2000 reflects two dependent sons and one dependent daughter; the applicant's wife's occupation is shown as "homemaker" and the applicant's as "butcher." *Id.* The record contains a document indicating that the applicant is making mortgage payments for the home in which his family lives. *Letter from* [redacted] dated April 19, 2001.

The evidence in the record establishes that the applicant's wife would endure extreme hardship if she remained in the United States without her husband. The record reflects that the applicant's wife, who is 55 years old, was unemployed from 1998-2000. *Form 1040 for 1998, 1999, and 2000.* Her husband indicates that she is presently unemployed and that he provides the sole economic support for the family. Three of their children are shown as dependents in the Form 1040 for the year 2000. The aforementioned income tax records show her husband provides the sole economic support of the family by operating the

family business, a butcher shop. Although the record reflects that the applicant and his wife have children who are over 20 years of age, it contains no evidence showing that they are in a position to financially support her if the applicant left the country. In light of the age and lack of employment history of the applicant's wife, the AAO is not persuaded that she has the skill to manage and operate their family business or is qualified to find suitable employment in the United States, that would provide a sustainable wage to meet the household expenses, including a mortgage, for herself and her three children, aged approximately 10, 15, and 17 years old. The applicant's wife has expressed concern about losing the family home if the applicant is forced to leave the country. She states that her husband "is my only support on this life for me[;] he is the one who is working for us and takes care [of] us." The stress that the applicant's wife would endure in attempting to keep her family unit intact would, the AAO finds, rise to the level of extreme emotional hardship. Thus, a review of the documentation in the record, when considered in its totality, reflects that the applicant has demonstrated that his wife would endure extreme hardship if she remained in the United States without him.

The AAO finds that in the event that the applicant's wife joined him overseas, she would endure extreme hardship as she would jeopardize her lawful permanent resident status in the United States. *Letter from Applicant*, received on January 5, 2005.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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. " *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's entry into the United States by fraud and unauthorized presence. The record also contains information pertaining to his convictions under section

[redacted]f the California Vehicle Code, and under section 472 of the California Penal Code for forging an official seal. With the[redacted]onviction, the court suspended the imposition of the sentence, placed the applicant on summary probation, and had him serve three days in the county jail. With the 472 PC conviction the record is silent as to the consequences of the conviction.

The favorable factors in the present case are the applicant's extensive family ties to the United States; extreme hardship to his U.S. citizen wife if he were to be denied a waiver of inadmissibility; the applicant's consistent record of employment, payment of taxes and financial support of his family; and the applicant's lack of a criminal record or offense since 1999.

The AAO finds that the immigration violations and crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, it finds that 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.