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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: NOV 07 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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant is a native and citizen of Mexico. On January 24, 1997, the applicant attempted entry to the United States by presenting, to the port of entry officer, a Resident Alien Card that had not been issued to the applicant. The applicant was thus 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 having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and 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 lawful permanent resident spouse and four U.S. citizen children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

In support of this appeal, counsel submits a brief, dated November 17, 2005; affidavits from the applicant and the applicant's spouse; photographs of the applicant's family; documentation regarding the applicant's youngest child's, [redacted] medical condition; copies of report cards issued to the applicant's three children, [redacted] a letter from the applicant's spouse's employer; and evidence of the applicant's home ownership. 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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 contains several references to the hardship that the applicant's U.S. citizen children would suffer if the applicant were to depart the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse.

Thus, the first issue to be addressed is whether the applicant's return to Mexico would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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.

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.

The applicant's youngest child [redacted], born in the United States on October 15, 2004, was diagnosed at birth with Pseudohypoaldosteronism, an inherited disorder, and electrolyte imbalance. As the applicant's spouse explains,

> Our youngest U.S. citizen child, [redacted], who was born on October 15, 2004, has been diagnosed with Pseudohypoaldosteronism since birth. He also suffers from electrolyte imbalance and requires numerous medications to be given to him four times a day, at six hour intervals, through a "feeding tube" to his stomach in order to control his condition of electrolyte imbalance. He is currently taking Sodium Chloride, Sodium Bicarbonate, Kayexalate, Fernisol Folic Acid and Zantac. It is also often necessary to feed him through his "feeding tube" since it is difficult for him to digest food and therefore does

not receive adequate nutrition from eating or nursing without supplementation. Due to [redacted] medical conditions, he requires frequent visits to his doctors for checkups, "urgent care", and testing-- at least three times a month just for laboratory work and blood tests. Our oldest son, [redacted] also had this inheritable medical condition and although his health has stabilized, he must visit the doctor regularly and watch his diet.

[redacted] medical expenses qualify under Social Security's MediCal CCS program, otherwise the costs of his medical care and medicines would be far more than we could afford...

I have no relatives in the United States...To hire a nurse's aide to take care of [redacted] would cost far more than we could afford. And of course, we could not have a day care worker or "baby sitter" give [redacted] his medicine and feedings since doing it correctly is critical to his health. Even though I would like to be there for [redacted] and give him his medicine and food, I would not be able to because it must be done every six hours each day, and...my work prevents from doing so...

For over seven years I have worked at Baja Sonora Mexican Grill...I was one of the first employees and I am currently the restaurant's manager. The business has recently opened up a second restaurant location and I often must go there to supervise the new "assistant" manager. In many respects it is like having two jobs and I work between 8 and 11 hours each day. I supervise approximately 25 employees and my schedule and the restaurant location that I must work at is unpredictable from day to day. Often times I must work on the weekends. As a result, I could not do most of the obligations and activities that my wife is required to do in order to take care of our children and [redacted] medical care.

...We have many bills, such as house payments, food, clothes, electricity, water and others. All this would be extremely difficult to do without my wife because even though she does not work out of the house, she is responsible for the children. For example, she is the one who is responsible for taking them to school – two different schools each day – and picking them up (there are no after school programs), helping them with their homework (her English is better than mine and she went to college in Mexico), taking them to all their appointments, including doctors appointments, preparing their food and medicine, getting them dressed, and doing all the housework.

If she was not allowed to live in the United States, I would not be able to afford to pay someone to take care of the kids while I work, and I do not think anyone would be able to properly take care of our youngest son, [redacted] Not only would the separation be unbearable for me, knowing that my children would not have the same possibilities and opportunities to study and succeed in life, would be most painful for me...*Affidavit from* [redacted], dated November 16, 2005.

The applicant's oldest child, [redacted] also suffers from the disorder referenced above. As the applicant states,

> [redacted], now age 8...was diagnosed with Pseudohypoaldosteronism, suffering from an electrolyte imbalance and frequent dehydration. He has had to be hospitalized many times for this condition. He is also taking several prescription medications that need to be given to him on a regular basis. Through my many hours by his bedside, both in and out of the hospital, I have learned the nursing procedures required to take care of him and the medicine he requires to keep him stable and healthy, as well as during emergencies...*Affidavit from* [redacted] dated August 5, 2003.

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).

Based on the record, the AAO has determined that the applicant's spouse would experience extreme hardship if he remained in the United States while the applicant returned to Mexico. Due to the extraordinary demands placed upon the family by [redacted] and more specifically due to his young age, [redacted]'s medical conditions, the applicant's spouse would be required to find an alternate source of employment with a reduced work schedule were the applicant removed, as the applicant would no longer be residing in the United States and assisting in the care of the four children. Such a reduced work schedule would likely mean that the applicant's spouse is no longer able to be employed in a supervisory/management role, which took him seven years to obtain, due to its unpredictable and lengthy work schedule. In addition, any alternate employment position would pay less as he would be working fewer hours. As such, were the applicant removed, the applicant's spouse would suffer financial and professional hardship.

In the alternative, the applicant's spouse would need to locate a caregiver with the training and capacity to provide the constant monitoring and supervision the children require, and specifically, the medical care that [redacted] need to survive; such care requires a trained professional who would have to be at the home for at least two of [redacted]'s medicine/food supplement tube feedings which are required every six hours, while the applicant's spouse continues to work full-time outside the home to support the family financially. Due to the applicant's youngest child's medicine/food supplement tube feedings and the critical nature of such feedings, a caregiver with medical expertise to properly assist the applicant's youngest child would be cost prohibitive.

Were the applicant removed, the applicant's spouse would have to assume the role of primary caregiver and breadwinner to four children, two with serious medical conditions that require constant monitoring and involvement, without the complete emotional, physical and psychological support of the applicant. Thus, the applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse.

The applicant's spouse would also experience extreme hardship if he accompanied the applicant and the children to Mexico. As counsel states, "...if [redacted] the applicant's spouse] chooses to move with his wife

and children to Mexico, it would be unlikely that he would be able to earn an equivalent salary given that he basically worked his way up to being a restaurant manager only after seven years of helping his current employer take the restaurant from a start up to a two restaurant site operation...the family would not be able to maintain the mortgage payments on their house, which has very little equity, and thus they would lose their house and their life savings at the same time. Finally, since [redacted] the applicant's youngest son] would not qualify for any financial assistance from the Mexican government for payment of all his medical bills (at the same level and quality of care) there would be an additional financial burden placed on the family since it would have to pay all doctor's bills, medical tests, and drug costs directly from [redacted] income and whatever savings might remain..." *Brief in Support*, dated November 17, 2005.

Given the pay disparity that exists between the United States and Mexico and [redacted] need for constant monitoring and medical treatment, it would be extremely difficult for the applicant's spouse and/or the applicant to locate employment that would permit the family to obtain the medical services and care needed. Limitations on the applicant's children's future development based on a move to Mexico would directly affect the applicant's spouse in that [redacted] may be able to establish a certain degree of independence in the future if they are able to continue progressing, despite their medical conditions. In the alternative, [redacted], and more specifically due to his young age, [redacted] may become utterly dependent upon the applicant and her spouse if positive progression ceases, which would likely occur if the entire family relocated to Mexico. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the 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 the applicant's spouse would face if the applicant were to return to Mexico, regardless of whether he accompanied the applicant or remained in the United States, the U.S. citizenship status of the four children, the medical conditions suffered by two of the applicant's children, the applicant's apparent lack of a criminal record, property ownership, the applicant's four lawful permanent resident siblings that reside in the United States, letters of support provided by community members on behalf of the applicant, the payment of taxes and the passage of over ten years since the applicant's immigration violation. The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States, her unlawful entry after removal, and unauthorized presence in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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