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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 10 2009

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.

John F. Grissom,
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a thirty-eight year-old native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She 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 husband and three children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 16, 2005.

On appeal, counsel asserts that the applicant's husband would suffer extreme hardship if the applicant were refused admission to the United States. Specifically, counsel asserts that the applicant's husband would suffer financial hardship in Mexico due to difficulty in obtaining employment there and loss of medical insurance and other benefits, and would be to the detriment of their son [redacted], who is hearing impaired and relied on this medical insurance to pay for periodic exams and provide and maintain his hearing aids. *Counsel's Brief in Support of Appeal* at 2-3. Counsel further asserts that the applicant's son would be deprived of educational opportunities and other services available in the United States for students with disabilities. *Brief* at 3. Counsel further asserts that the applicant's husband and children would suffer extreme emotional hardship if the applicant were removed to Mexico and they remained in the United States, in particular because the applicant's husband works full time and does not communicate in sign language as well as the applicant, and has difficulty understanding their son [redacted]. *Brief* at 3-4. In support of the waiver application and appeal, counsel submitted declarations from the applicant and her husband, declarations from the applicant's children, medical records for the applicant's son, letter from the applicant's pastor and the director of an organization for hearing impaired youth, a letter from the applicant's son's school, and information on conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act 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) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

The applicant also submitted an Application for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212), and this application was denied because the applicant was found to be inadmissible under section 212(a)(9)(C)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(II), and subject to reinstatement of removal under section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), for having reentered the United States unlawfully in August 1996 after her exclusion and deportation on August 15, 1996. *See Decision of the District Director denying Form I-212* dated January 9, 2006. The AAO notes that neither section 212(a)(9)(C)(II) nor section 241(a)(5) of the Act applies to unlawful reentries into the United States occurring before April 1, 1997, the effective dates of these provisions. *See Castro-Cortez v. INS,* 239 F.3d 1037 (9th Cir. 2001). Therefore the applicant is eligible to seek permission to reapply for admission after deportation as well as a waiver of grounds of inadmissibility.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. The BIA has further stated:

> 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).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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 AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. 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 record reflects that the applicant is a thirty-eight year-old native and citizen of Mexico who last entered the United States in August 1996 without inspection. The applicant had attempted to enter the United States on August 9, 1996 by presenting a fraudulent Mexican passport containing a permanent resident stamp and was ordered excluded and deported on August 15, 1996. The record further reflects that the applicant's spouse is a forty-three year-old native of Mexico and naturalized U.S. citizen. He has lived in the United States since he was fifteen years old and became a U.S. citizen in 2000. The applicant married her husband in 1989 and they have three Lawful Permanent Resident children. The applicant and her family reside in South Gate, California.

Counsel asserts that the applicant's husband would suffer financial hardship if he were to relocate to Mexico because he would be unable to find employment there and support the family and would have difficulty readjusting to life in Mexico after residing in the United States for over twenty years. In support of these assertions Counsel submitted information on conditions in Mexico and a declaration from the applicant's husband. In his declaration the applicant's husband states that they do not have any place to live in Mexico except in the small home of his parents, who are both retired. *Declaration of* [redacted] dated December 9, 2005. He states that if he relocated to Mexico to avoid separation from his wife, he would lose the medical insurance he obtains through his employer, and would find it difficult to obtain sufficient employment to support the family. *Declaration of* [redacted] He further states that it would be difficult for their son, who is deaf and communicates in American Sign Language, to communicate with other children his age. He states,

> I would like to emphasize the purpose of coming to this country, it was because of the health of my son [redacted] Being that he has spent the majority of his life (since age three) here learning the American sign language and attended in the USA all of his schooling until this day. Having all his friends there that are the only ones who he can relate to because they have the same disability and being able to understand each other. The emotional impact would be a big problem, since every time I talk to him about this he starts to cry . . . . *Declaration of* [redacted]

Documentation on the record indicates that the applicant's son [redacted] has been diagnosed with severe sensorineural hearing loss with a severe loss of speech and no word discrimination abilities, and that he communicates primarily via American Sign Language (ASL). *See medical records submitted in support of waiver application and appeal.* [redacted] began wearing hearing aids at age three and has been enrolled in the Deaf and Hard-of-Hearing program in the Los Angeles County school system since 1999 and also requires speech therapy. *See Audiologic Evaluation and Letter from Los Angeles County Office of Education.*

The applicant's husband is concerned that in Mexico his son would not receive the intense intervention and therapy that he receives in the United States, both through the public school system and organizations such as the Deaf and hard of hearing Educational Athletic Foundation and from physicians and audiologists whose care is paid for through the applicant's husband's medical insurance. This insurance, which is provided through the employment of the applicant's husband, pays for hearing tests and periodic examinations, as well as hearing aids and batteries and maintenance for the hearing aids. *Declaration of* [redacted] The applicant's husband is concerned that such services would have to be purchased in Mexico, an expense he would be unable to afford. Information on conditions in Mexico submitted with the waiver application indicated that at the time unemployment in Mexico was at a near five-year high, and other documentation indicated that 25 percent of the population resided in rural areas where subsistence agriculture was common, income distribution was skewed, and the minimum wage did not provide a decent standard of living for a worker and family. *See U.S. Department of State, 2004 Country Report on Human Rights Practices – Mexico*, Released February 28, 2005. Documentation on the Record further indicates that "discrimination against persons with disabilities in employment, education, access to health care, and the provision of other services continued," and problems in children's health and education remained, with only nine years of compulsory education and only 30 percent of youth from age fifteen to twenty attending school. *See U.S. Department of State, 2004 Country Report on Human Rights Practices – Mexico.*

Courts have recognized that in certain cases, economic impact combined with related personal and emotional hardships may cause hardship that rises to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981). The applicant and her husband are responsible for the care of three children and the applicant's husband fears that due to high unemployment and the fact that his job skills would not be relevant in Mexico, he is unlikely to find adequate employment there that would allow him to support his family and provide for the special needs of their hearing-impaired son. In Mexico, the applicant's son would therefore likely be deprived of the educational and medical services he receives in the United States, and would be separated from his school and other activities as well as contact with other hearing-impaired children with whom he can communicate. Further, since he communicates primarily in American Sign Language, relocation to Mexico would render the applicant's son unable to communicate with individuals outside of his family. The emotional impact

of relocating to Mexico on the applicant's son would cause the applicant's father to experience emotional hardship, which, when combined with economic hardship and difficulties readjusting to conditions in Mexico after residing primarily in the United States since he was fifteen years old, would rise to the level of extreme hardship.

In his declaration the applicant's husband states that he supports his family financially through his employment as a mechanic and that the applicant does not work outside the home and is responsible for taking care of the children and home. *See Declaration of* [redacted]. He states that without his wife's help he does not know how he could do this, and further states that although he and his other children have learned sign language, it is the applicant that has taken classes to learn sign language, and he depends on her to communicate with their son [redacted] *See Declaration of* [redacted]. Documentation on the record indicates that the applicant's husband has been employed with the same company as a truck mechanic since 1997, and copies of tax returns submitted with the applicant's affidavit of support indicate that the applicant's husband earned all of the income reported on the returns. *See letter from Boerner Truck Center and copies of Joint Income Tax returns*. The record also contains a certificate stating that the applicant completed 28 hours of coursework in American Sign Language. A letter from the applicant's son [redacted] further states that without his mother his heart would be broken and that without her his father would not understand him because he only understands "a little." *See Declaration of* [redacted] dated December 4, 2005. He further states that she helps him with his homework and wherever they go his mother tells him what people are talking about. *Id.*

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that her husband would experience extreme hardship if she is denied admission to the United States and he remained in the United States. If he remained in the United States without the applicant, he would have to provide for his family, including one child with a significant disability, without the household assistance and child care the applicant currently provides. Further, as noted above, the applicant, who does not work outside the home, has dedicated a significant amount of time to learning American Sign Language and facilitates communication between the applicant and their hearing-impaired son. When considered in the aggregate, the emotional effects of separation from the applicant, to whom he has been married for twenty years, combined with the hardship of having to work full-time, financially support and care for their three children, and attempt to learn enough American Sign Language to communicate with their son without the applicant's assistance, would rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien 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(i) 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, "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. " *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's immigration violations, attempting to enter the United States with a fraudulent passport, reentering the United States without inspection after bring excluded and deported, and remaining unlawfully in the United States.

The favorable factors in the present case are the hardship to the applicant's husband and Lawful Permanent Resident children if she is removed, the applicant's lack of a criminal record, her length of residence and family ties to the United States, and her ties to the community. The record contains a letter from the pastor of her church that states that the applicant volunteers at the church as a teacher's aide, interprets for the deaf, and is a part of their biblical guidance ministry, and the applicant's husband serves as an usher for Sunday services and has been involved in missionary trips with their children. Further, a letter from the executive director of an organization that assists deaf and hearing-impaired children states that the applicant and her husband both regularly participate with their son in tennis clinics for hearing-impaired children and transport other deaf children to the clinics.

The AAO finds that applicant's violations of the immigration laws cannot be condoned. Nevertheless, the AAO 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.