identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Hq

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: JAN 22 2010

CDJ 2004 863 023

IN RE: [redacted]

APPLICATION: Application for Waiver of Ground 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico. 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 46-year-old native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has sought to procure admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen, and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The OIC found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *See Decision of the OIC*, dated Feb. 16, 2007. On appeal, the applicant contends through counsel that the denial of the wavier has caused extreme hardship to his wife. *See Appellate Brief.*

The record contains, *inter alia,* birth certificates for the couple's two U.S. citizen children and the applicant's wife's two children from a previous relationship; a letter from the applicant's wife; letters from the applicant's wife's doctors; medical records for the applicant's wife; and a brief on appeal. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

The record shows that the applicant entered the United States on May 19, 1996, by presenting a counterfeit Arrival Record (Form I-94). *See Form I-213, Record of Deportable Alien*, dated May 22, 1996. The applicant was encountered by a border patrol officer on May 22, 1996, and he admitted that he presented a counterfeit document to the inspecting officer. *Id.* The applicant voluntarily returned to Mexico. *Id.* On June 17, 1996, the applicant again presented a counterfeit Arrival Record when he applied for entry to the United States. *See Form I-213, Record of Deportable Alien*, dated June 17, 1996. The applicant was detained for an exclusion proceeding, *id.*, and he was ordered excluded and deported from the United States on June 26, 1996, *Order of the Immigration Judge*; *Form I-296, Notice to Alien Ordered Excluded by Immigration Judge.* The applicant's use of counterfeit Arrival Records in an attempt to gain admission into the United States renders him inadmissible under section 212(a)(6)(C)(i) of the Act. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447-49 (BIA 1960; A.G. 1961) (stating that a misrepresentation is material if the alien is ineligible on the true facts, or if the misrepresentation shut off a line of inquiry which may have resulted in ineligibility).

In order to obtain a section 212(i) waiver, an applicant must show that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(i). Under the plain language of the statute, hardship to the applicant or to his or her children or other family members may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States, and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

> 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted).

However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), the U.S. Supreme Court affirmed that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO finds that the applicant's spouse has established that the denial of a waiver imposes an extreme hardship on her if she remains in the United States without her husband, or if she relocates to Mexico to be with her husband.

The record reflects that the applicant's spouse, [redacted], is a 40-year-old native of Mexico and citizen of the United States. *See Certificate of Naturalization for* [redacted] The couple has two U.S. citizen children. *See Birth Certificates for* [redacted] (born in 1997) *and* [redacted] (born in 1998). [redacted] has a 21-year-old daughter and a 16-year-old son from a previous relationship. *See Birth Certificates for* [redacted] *and* [redacted] The applicant and [redacted] have been married for seven years. *See Form I-130, Petition for Alien Relative* (indicating marriage on October 26, 2002, in Mexico).

On May 30, 2000, [redacted] was seriously injured in an automobile accident which rendered her comatose for one week. *See Letter from* [redacted] *to* [redacted], dated Nov. 30, 2000. She has been diagnosed with syringomyelia, "a condition, often post-traumatic, in which the fibers of the spinal cord separate and the small central canal within the cord begins to expand and fill with fluid, destroying and damaging nerve cells and nerve pathways in the area." *See Letter from* [redacted]. The disease is often progressive, and there is no known cure. *Id.* Although [redacted] has had surgery to try to stop the progression, her doctor states that "she has suffered irreparable nerve damage and is left permanently seriously disabled." *Id.* Her medical condition includes: very little use of her left arm and hand; seriously impaired legs with spasticity; chronic, severe and intractable pain; and poor memory. *Id.*; *see also Letter from* [redacted], dated Feb. 28, 2007; *Medical Records.* She "will require chronic pain medications . . . as part of her ongoing medical needs." *Letter from* [redacted] Because of her disability, [redacted] has difficulty walking with a cane, requires assistance with many personal care tasks, and is unable to perform most housekeeping duties. *See Letter from* [redacted]. Her medical records also reflect the use of prescription medications for clinical depression. *See Letter from* [redacted] *to* [redacted], dated Jul. 26, 2001.

[redacted] underwent surgery for a thoracic sirinx on March 16, 2006, and she had left shoulder surgery in February, 2007. *Letter from* [redacted], dated Feb. 28, 2007. [redacted] opines that [redacted] "medical situation is a prohibitive deterrent to her emigrating to Mexico, and inasmuch as she needs so much partner support and assistance, we support her request for

compassionate consideration in the immigration status of her husband, for her health concerns and the well-being of her family." *Letter from* [redacted]

[redacted] has presented evidence of a serious and progressive medical condition, which has rendered her disabled. *See Medical Records and Physicians Letters.* She is unable to care for herself or her family without assistance. *Id.* Further, [redacted] has been able to obtain medical care and treatment in the United States, and her doctor indicates that she cannot relocate to Mexico because of her medical situation. *Letter from* [redacted] Accordingly, the record supports a finding that the denial of the wavier imposes extreme hardship, above and beyond the normal difficulties of separation or relocation, upon [redacted]

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 Coelho,* 20 I&N Dec. 464, 467 (BIA 1992). The adverse factors in this case are the misrepresentations for which the applicant seeks a waiver. The favorable and mitigating factors in this case include: the applicant's ties to his U.S. citizen spouse and children in the United States; the applicant's lack of a criminal record; and the extreme hardship to the applicant's spouse, if he is denied a waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that although the immigration violations committed by the applicant are serious, 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.