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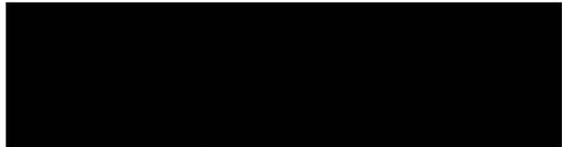
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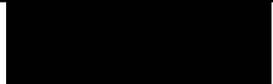
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: EL PASO

Date:

AUG 24 2006

IN RE:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, El Paso, Texas, denied the waiver application, and it 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 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), for attempting to procure admission to the United States by fraud. The applicant is the spouse of a U.S. citizen and father of a U.S. citizen son. He 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 his spouse and son.

The district director concluded that the applicant had 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 May 23, 2003.

The record reflects that, on September 4, 1975, the applicant applied for admission to the United States at the El Paso, Port of Entry. The applicant presented a counterfeit Alien Registration Card (Form I-151) and was found inadmissible. The applicant was paroled into the United States for prosecution. On September 9, 1975, the applicant pled guilty to attempted illegal entry and was sentenced to 45 days in jail. On October 22, 1975, the applicant was permitted to withdraw his application for admission and voluntarily return to Mexico. On December 9, 1992, the applicant applied for admission to the United States at the El Paso, Port of Entry. The applicant presented fraudulent wage receipts, Identity Card for Mexican Nationals Residing in the Border Area (FM-13), Social Security Form and employment letter in an attempt to procure admission with an I-586 Border Crossing Card. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant was permitted to withdraw his application for admission and was voluntarily returned to Mexico. On an unknown date, but prior to December 19, 1997, the date on which the applicant married his U.S. citizen spouse, [REDACTED] in El Paso, Texas, the applicant entered the United States without inspection. On March 22, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On February 22, 1999, the applicant appeared at Citizenship and Immigration Services' (CIS) El Paso District Office. The applicant admitted to attempting to procure admission to the United States by fraud in 1975 and 1992.

On February 25, 2000, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that his spouse and son would suffer extreme hardship if he is removed from the United States because his spouse is disabled and both are in need of care. *See Form I-290B*, dated June 16, 2003. In support of his contentions, the applicant submitted additional medical documentation in regard to his spouse, disability documents for his spouse and copies of documents previously provided. The entire record was reviewed and considered in rendering a decision in this case.

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

- (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.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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 district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on documents in the record and the applicant's admission to attempting to procure admission into the United States by fraud in 1975 and 1992. The applicant does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen son will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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 566. The BIA has held:

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).

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 record reflects that [REDACTED] is a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1997. The applicant and [REDACTED] have a ten-year old son who is a U.S. citizen by birth. The record reflects further that the applicant and [REDACTED] are in their 50's and that Ms. [REDACTED] has physical and mental illnesses.

The applicant contends that [REDACTED] would suffer extreme hardship if the applicant is removed from the United States. [REDACTED] has no marketable job skills and has been placed on disability due to physical and/or mental illnesses for extended periods of time since 1991. The record reflects that the applicant has been employed as a carpenter since 1997. [REDACTED] has a history of depression, bipolar disorder, dysthymic disorder with a dependent personality disorder, panic disorder with agoraphobia, migrainous headaches and Arnold-Chiari malformation of the brain. [REDACTED] was classified as disabled and received disability insurance benefits and supplemental security income as an individual whose impairment(s) are severe enough to impose significant restrictions on her ability to do basic work activities from April, 1991 to February, 1997, and from May 18, 1999, for a period of at least 12 months or more. The applicant submitted medical and psychological documentation for the applicant's spouse indicating that, in 1999, she underwent surgery for carpal tunnel and the Chiari-malformation. These documents also indicated that the applicant's spouse was disabled by her depression. The applicant also submitted medical and psychological documentation for the applicant's spouse indicating that, in 2001 and 2003, she continued to be treated for the Chiari-malformation, chronic migrainous headaches, depression and bipolar disorder. The social security administration's findings indicate that [REDACTED] mental and physical health conditions render her unable to perform basic work activities and the applicant's affidavit indicates that these conditions require the applicant's financial and physical support not only for the applicant's spouse, but also the applicant's son for whom the applicant's spouse is unable to care. Financial documentation indicates that [REDACTED] has not been employed since prior to her marriage to the applicant and there is no evidence in the record that she continues to receive any assistance from social security. *Tax Records*. Financial documentation indicates that, through his employment in the United States, the applicant earned \$13,790 in 2000 and received a wage of \$16,900 from his employer in 2001. The medical documentation in the record indicates that the medication [REDACTED] requires is in limited supply in the United States, suggesting that she would be unable to receive proper medical care in Mexico. The social security administration's findings and the medical documentation submitted indicates that if the applicant's spouse relocated to Mexico to avoid separation from her husband, the applicant would be unable to obtain sufficient employment to support the family owing to the economy. There is no documentation of country conditions on the record.

The couple's prospects, even with the applicant's training as a carpenter, for adequate employment in Mexico are somewhat dim. If she remained in the United States [REDACTED] would face trying to maintain alone a household and raise a child, as well as trying to combat her own physical and psychological problems. It would be extremely difficult for [REDACTED] to mitigate the effects of separation by visiting the applicant, due

to the cost in relation to any income she may be able to generate. In Mexico, [REDACTED] significant mental and physical health conditions would most likely suffer, and it is probable that [REDACTED] would be unable to receive adequate care. Although the applicant is a skilled carpenter, in Mexico, where wages are generally lower and the unemployment rate is high, these skills would be undermined and he and his family could be reduced to poverty, compounded by [REDACTED] mental and physical health conditions. The economic hardship [REDACTED] faces is not uncommon to alien and families upon deportation. However, the hardship [REDACTED] faces is substantially greater than that which aliens and families upon deportation would normally face when combined with her history of Arnold-Chiari malformation, migrainous headaches, bipolar disorder, dysthymic disorder with a dependent personality disorder, panic disorder with agoraphobia and debilitating depression. A finding of extreme psychological hardship is the inevitable conclusion of the combined force of the submitted medical and psychological letters. A discounting of the extreme hardship [REDACTED] would face in either the United States or Mexico if her husband were refused admission is, therefore, not appropriate. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

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 factors in the present case are the willful misrepresentations for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's wife if he were refused admission, the applicant's wife and son's significant ties to the United States, the applicant's otherwise clean background and payment of taxes since 1997.

The AAO finds that, although the immigration and penal code violations committed by the applicant are 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