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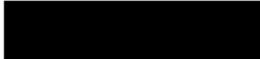
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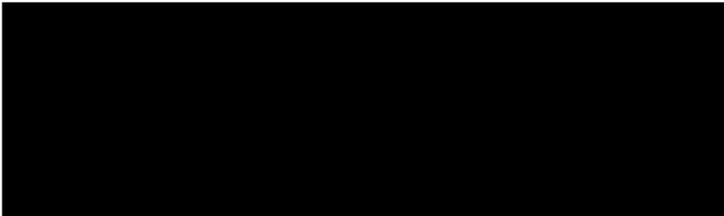
IN RE:



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:



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, San Francisco, California 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 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 seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant 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 family.

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). *Decision of the District Director*, dated September 27, 2004.

On appeal, counsel asserts that the district director has not had an opportunity to consider new hardship factors submitted on appeal which would establish extreme hardship. *Brief in Support of Appeal*, at 4, dated November 23, 2004.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and declaration, the applicant's spouse's prescription information, a nurse practitioner's letter for the applicant's spouse and medical records for the applicant's child. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented fraudulent documents with a tourist visa application that was denied on February 3, 1995. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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 waiver is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen spouse. Hardship to the applicant's children is only relevant to the extent it causes hardship to the applicant's spouse. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board 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 lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. Counsel states that the applicant's spouse has resided on the United States since she was eleven, her mother and sisters are U.S. citizens, and she is wholly integrated into American society. *I-601 Cover Letter*, at 3, dated July 27, 2004. The applicant's spouse states that she sees her family every week and also that she has a half-brother. *Applicant's Spouse's Declaration*, at 1-2, dated July 23, 2004. Counsel states that the applicant's spouse's aging grandmother is in Mexico, but she spends significant time in the United States. *I-601 Cover Letter*, at 3. Counsel states that the applicant's spouse does not have a support group or network of friends in Mexico, she and the applicant have two children (who are now nine and five years old), they will have little opportunity to earn money and will not be able to afford healthcare, and they will struggle to find housing. *Id.* at 4. The record reflects that the applicant's spouse's older child has a history of asthma. *Letter from* [REDACTED], undated. The applicant's spouse states that moving to Mexico is not an option for her and her two children and that her child in second grade will have more educational and economic opportunities in the United States. *Applicant's Spouse's Statement*, at 3, dated November 19, 2004. There is no indication that the applicant's spouse's children have ever resided in Mexico. Therefore, the AAO notes that raising the children in Mexico would cause some difficulty to the applicant's spouse.

The record reflects that the applicant's spouse was attending college and working part-time. *Id.* The applicant's spouse states that she wants to become a certified public accountant, her educational plans would be shattered if she returned to Mexico and she will be forced to do any type of work in order to stay alive. *Applicant's Spouse's Declaration*, at 2. The record indicates, as discussed in the second part of the analysis below, that the applicant's spouse is prone to clinical depression based on stress. Considering the applicant's spouse's ties to the United States, her lack of ties to Mexico, the prospect of raising her two children in a country unfamiliar to them, the relevant education and career issues, and that the applicant's spouse is prone

to stress-induced depression, the AAO finds that she will face extreme hardship in the event that she resides in Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse has been diagnosed with depression. *Brief in Support of Appeal*, at 2. The record includes a letter from a nurse practitioner which states that the applicant's spouse is under increased emotional stress due to her husband's immigration problems and she is suffering from insomnia, depression and anxiety. *Letter from Contra Costa Health Services*, dated October 28, 2004. The applicant's spouse states that she could not manage her studies, decided to leave school and quit her job due to the inability to manage her responsibilities. *Applicant's Spouse's Statement*, at 2. The record includes prescription information for the applicant's spouse's two antidepressant medications. The applicant's spouse states that she would not be able to adequately care for her children without the applicant's support. *See Id.* Counsel notes that the applicant's spouse will face a prolonged geographic separation from the applicant and the complete financial, physical and emotional responsibility for the children, while having mental health problems. *Brief in Support of Appeal*, at 6. The AAO notes the plausibility that the applicant's spouse's depression will continue upon separation from the applicant. A thorough review of the entire record reflects that separation will result in extreme hardship to the applicant's spouse.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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(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-Morales*, 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 misrepresentation and his periods of unauthorized presence and employment.

The favorable factors include the presence of the U.S. citizen spouse and children, extreme hardship to the applicant's spouse, gainful employment, payment of taxes and lack of a criminal record.

The AAO finds that the immigration violations committed by the applicant are serious in nature and 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.