



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date: DEC 21 2007

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.

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 record reflects that the applicant is a native and citizen of Ecuador 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 enter the United States by using someone else's entry documents. The record reflects that the applicant is the spouse of a lawful permanent resident. 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 lawful permanent resident spouse and United States citizen child and stepchildren.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 26, 2005.

On appeal, the applicant, through counsel, asserts that the District Director "abused [her] discretion in denying the [waiver] application." *Form I-290B*, filed October 25, 2005. Additionally, counsel claims that the applicant's "spouse will suffer an extreme hardship if her husband is denied residency and forced to depart from the United States." *Id.*

The record includes, but is not limited to, counsel's brief, statements from the applicant and his wife, statements from the applicant's children, family, and friends, a letter from Dr. [REDACTED] regarding the applicant's wife's medical condition, a psychological evaluation by Dr. [REDACTED] regarding the applicant's wife's mental health, numerous tax documents, and a court disposition from the Municipal Court of San Fernando, California. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen children and stepchildren would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children and stepchildren will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on September 8, 1984, the applicant initially attempted to enter the United States by using someone else's entry documents. The applicant was removed from the United States. In April 1989, the applicant reentered the United States without inspection. On April 7, 1989, the applicant married Ms. [REDACTED] a citizen of Ecuador, in California. On May 15, 1991, the applicant's daughter, [REDACTED] was born in California. On July 26, 1995, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 13, 1997, the applicant was arrested in Los Angeles County, California, for disorderly conduct, a misdemeanor. On March 14, 1997, a San Fernando Municipal Court judge convicted the applicant of disorderly conduct: lewd act, and sentenced him to probation for twenty-four (24) months. On April 26, 2001, the applicant's wife's United States citizen sibling filed a Petition for Alien Relative (Form I-130) on behalf of the applicant's wife. On May 31, 2003, the applicant's Form I-485 was terminated because the applicant failed to supply requested evidence. On October 24, 2003, the applicant's stepson, [REDACTED] became a United States citizen. On January 21, 2004, the applicant's stepson [REDACTED] filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed another Form I-485. On October 14, 2004, the applicant's wife became a lawful permanent resident. On October 21, 2004, the applicant filed a Form I-601. On September 26, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The 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.

Counsel asserts that the applicant's spouse "will suffer an extreme hardship by virtue of being separated from the person she has grown to love and dependent [sic] on." *Statement of Position*, page 3, filed November 17, 2005. The applicant and his wife have known each other "for over 26 years and have been married for 13 thirteen years. During this period she has become extremely close and dependent to [sic] appellant for love, affection, support and strength. Together they have established a strong family unity and ties to each other. The appellant is the most important person in the life of his wife because of the numerous years together and the dependency which has developed by her." *Id.* at 2. "In addition the appellant and his wife have suffered the misfortune of losing [sic] their youngest son in a tragic automobile accident involving a drunk driver. This loss has greatly affected Mrs. [REDACTED] appellant does not gain approval of the application, she will be overwhelmed by the additionally hardship in losing her husband." *Id.* at 3. The applicant's daughter [REDACTED] states the death of her brother "has affected their lives so much. [She does not] know what [she] would do without [the applicant]." *Letter from [REDACTED]*, dated August 15, 2004. The applicant's stepson, [REDACTED] states "[w]hen [his] family lost [his] brother, it was the worst pain [he has] ever felted [sic] in [his] life, [he does not] want [his] little sister going threw [sic] that feeling again her father is all that she's got for a father figure." *Letter from [REDACTED]*, dated August 14, 2004. The applicant's daughter-in-law, [REDACTED] states the applicant "lost his only son to a drunk driver in the Summer of 2003. When [their] family lost [REDACTED] it was a horrific tragedy, searching for him for almost 3 days checking the local hospitals only to find out that he was at the L.A. County Corners [sic] Officer for almost three days. Junior was the perfect son, he some how [sic] managed to work a full time job, pay his way through college and then attend a University...To [her] this is a son that any father would want. Junior was just trying to do what his father taught him; to someday provide for [h]is family like his father has." *Letter from [REDACTED]*, dated August 15, 2004.

The AAO finds that evidence in the record establishes that the applicant's wife suffers from depression, anxiety, and hypertension. Dr. [REDACTED] states the applicant's wife is experiencing a severe range of depression and anxiety, and diagnosed her with Adjustment Disorder of Adult Life with Mixed Anxiety and Depressed Mood. *Psychological Evaluation by [REDACTED] Ph.D.*, page 5 and 7, dated November 9, 2005. The applicant's wife told Dr. [REDACTED] that "[s]ince the death of [her] son, [she] can't sleep, [she] feel[s] very bad, [her] blood pressure gets very high. If [the applicant] is not with [her], [she] know[s] [she'll] get very sick...[The applicant] knows how bad [she was] after the death of [their] son. If [the applicant] leaves, he knows [she'll] die. [She] would not be able to stop worrying about him and [she] would live in constant worry and pain; [she] would die." *Id.* at 3. Dr. [REDACTED] states the applicant's wife "is currently amidst great emotional turmoil and tension. As a result, she is highly anxious and dysphoric...Though Mrs. [REDACTED] denies suicidal ideation, suicide risk cannot be overlooked in individuals with her level of depression. Of great concern is the fact that she indicates, 'I do not expect things to work out for me,' and 'I feel my future is hopeless and will only get worse.' Such a negative expectation of her future can affect significantly her risk of suicide, increasing its possibility of occurrence, particularly if she is further exposed to anxiety producing situations, such as the separation from her husband...This is a time where Mrs. [REDACTED] requires stability, peace and the opportunity to deal with all of her strong emotions...For

her to have to experience yet another loss, particularly one as significant as that of her husband, who is the pillar in her life, she would truly crumble psychologically and emotionally...Removal of [the applicant] would be devastating for her, as she is grappling with, and trying to make sense of the recent death of her son, and who would then would be forced to deal with the loss of her husband. A removal of [the applicant] would only serve to exacerbate this sense of loss of control and loss of loved ones. Having to comfort her children with their own loss of their father, having to face financial instability and probably bankruptcy, Mrs. [REDACTED] could not emotionally nor psychologically endure such trauma." *Id.* at 5-6. Dr. [REDACTED] states the applicant has been his patient since July 1998 and "[h]er primary diagnosis is hypertension...She is currently under treatment for depression...It is [his] opinion, that in order to control her hypertension and depression, it is important to reduce stress factors." *Letter from [REDACTED] Family Medical Clinic*, dated November 2, 2005. The applicant's wife states the applicant "is the principal financial supporter of [their] family without him [she] could not support [herself] or [their] family either financially or spiritually. [Her] husband is [her] only source of strength and character he provides [her] with the courage and fortitude to sustain [her] everyday life." [REDACTED] dated November 4, 2005. The applicant states he has "worked hard to provide for [his] family and [himself], [he] know[s] that without [his] moral and financial support [his] wife and family will suffer extreme hardship." *Declaration of the applicant*, dated November 11, 2005. The applicant's daughter, [REDACTED], states the applicant "is a really hardworker and is the head of [their] family. He has almost always had 2 jobs at one time to support [her] family. He also helps [her] with school." [REDACTED]. The applicant's stepson, [REDACTED], states the applicant is "a good man, a good husband, and excellent father and a good provider for his family." [REDACTED]. The applicant's friend, [REDACTED] states he has known the applicant for 25 years and the applicant is always "willing to help to everyone who need [sic] him. He is dedicated to his family and friends and [a] very hard working person." *Letter from [REDACTED]* dated August 15, 2004. The applicant apologizes for "attempting to enter the U.S. with a document belonging to someone else in 1984. [He is] very remorseful [for] having committed this violation." *Declaration of the applicant, supra.*

The AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(i) of the Act, in that the applicant's spouse would suffer emotional hardship as a result of her separation from the applicant. The record establishes that the applicant's spouse's emotional and psychological problems would be exacerbated whether the applicant is removed from the United States without her or whether she joins him in Ecuador. Even though the applicant's wife has not stated she is suicidal, Dr. [REDACTED] believes that the stress of being separated from her husband could result in suicidal ideations. *See Psychological Evaluation by [REDACTED] Ph.D.*, page 5-6, *supra*. Additionally, after the loss of her son in a tragic accident, if the applicant's wife joins the applicant in Ecuador, the cumulative effects of having to leave the United States and be separated from her family in the United States, could cause additional stress which would result in extreme hardship. *Id.* Combined with the increased financial and familial burdens that the applicant's spouse will face if the applicant is removed from the United States, the hardship in this case is beyond that which is normally experienced in cases of removal. Accordingly, the AAO finds that the applicant has established that his lawful permanent resident wife would suffer extreme hardship if his waiver of inadmissibility application were denied.

The favorable factors are the extreme hardship to his lawful permanent resident wife, who depends on him for emotional and financial support, and the applicant's contributions in helping to raise the children. The

unfavorable factors in this matter are the applicant's periods of unauthorized presence and employment in the United States and his criminal conviction for disorderly conduct on March 14, 1997.

While the AAO does not condone his actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.