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FILE: [REDACTED]

Office: CHICAGO DISTRICT OFFICE

Date: FEB 22 2007

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

[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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, a citizen of Mexico, was found inadmissible to the United States under 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen, and 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 children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the district director erred in denying the application. In her appellate brief, counsel contends that the district director failed to consider “all the relevant evidence in light of established case law.”

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

- (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:

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant’s husband. 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 Bureau of Immigration Appeals (BIA) 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 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. 22 I&N Dec. at 565-566.

The record establishes that the applicant attempted to enter the United States, fraudulently, in February 2000. She had purchased a "card" in Ciudad Juarez, Mexico for \$200. Upon presentation of this "card" to an immigration inspector with the intent of entering the United States, she was asked to provide her "real name" and was subsequently returned to Mexico. She entered the United States, without inspection, later that same day. Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

In denying the applicant's Form I-601, the district director stated the following:

You have failed to demonstrate "extreme hardship" to your United States citizen spouse . . . [I]t is apparent that your spouse is the primary income support for your household. . . .

You have not demonstrated that your spouse would not be able to maintain his standard of living without your assistance. Your spouse has a long-standing job with sufficient income to seek care for your daughters . . . You have not demonstrated that your absence would cause extreme financial hardship to your spouse.

Both you and your spouse were born in Mexico. If your husband were to relocate to Mexico with you, he would not encounter any culture shock or language barriers. . . .

On appeal, counsel contends that the applicant qualifies for a waiver of inadmissibility. Counsel contends that the applicant's forced return to Mexico would inflict extreme hardship on her husband. Counsel contends that the applicant's husband would experience extreme hardship if his wife were returned to Mexico, regardless of whether he accompanied her to Mexico.

The record contains extensive documentation regarding the applicant's medical condition. As a result of her diagnosis of Graves Disease, she has undergone a complete thyroidectomy,¹ takes several prescription medications, and is monitored continuously by her doctors. Counsel notes the high cost of the applicant's medical treatment, and presents evidence to verify that the majority of these costs are borne by the health insurance plan sponsored by one of her husband's employers. For example, her March 2005 surgery alone cost \$16,990.10, but the applicant and her husband were responsible for \$516.40; his health insurance plan covered the rest. In March and April 2005, the applicant paid \$139.92 in co-payments for prescription medications; without insurance coverage this figure would have been at least \$282.43.² Counsel emphasizes, and submits letters from doctors to verify, that these treatments are ongoing and will continue for the rest of her life.

¹ As she no longer has a thyroid gland, the applicant is now clinically and biochemically hypothyroid.

² As the amount covered by insurance was not detailed on every receipt, this figure is likely much higher than \$282.43.

Counsel contends that if the applicant were to return to Mexico, her medical care would not be covered by her husband's health insurance plan. Moreover, treatment would not be provided unless all costs were paid prior to receiving treatment and medication. The applicant's husband's 2004 tax return establishes a gross adjusted income of \$33,665, a figure similar to the income earned in previous years. As such, the cost of the applicant's March 2005 surgery along would have consumed over half of the family's annual income. The AAO finds that that applicant's husband would face extreme economic hardship if the applicant were to return to Mexico as a result of the radical increase the family would face in the cost of the applicant's continued medical care.

The district director also found that the applicant's husband would not face hardship were he to return to Mexico with the applicant. However, the evidence submitted on appeal in this particular case rebuts this finding. The AAO finds that the applicant's husband would in fact face extreme hardship if he were to return to Mexico. The record establishes that he would not be able to find a job with comparable health insurance benefits that would enable him to pay for the applicant's medical care.

The AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's husband would face if the applicant were to return to Mexico, regardless of whether he and their children accompanied her, a United States citizen husband and two lawful permanent resident daughters, lack of a criminal record, and the passage of seven years since the immigration violation. The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States and periods of unauthorized presence.

While the AAO does not condone her actions, the AAO finds that the hardship imposed on the applicant's husband as a result of her inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.