



U.S. Citizenship
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FILE: [REDACTED] Office: SAN FRANCISCO, CA

Date: JUL 10 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:

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, San Francisco, California, 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 is 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the father and stepfather of U.S. citizen children. 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 children.

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 April 26, 2004.

The record reflects that, on October 23, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On July 9, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco, California District Office. He testified that he had obtained entry into the United States by presenting a lawful permanent resident card that belonged to another person in 1995. On April 16, 2004, 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 spouse.

On appeal, counsel contends that the district director erred in finding that the applicant's spouse would not experience extreme hardship upon the applicant's removal from the United States. *Brief In Support of Appeal*, dated June 24, 2004. In support of her contentions, counsel submits the referenced brief, statements, and biographical, financial and medical documentation. 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) of the Act on the applicant's admitted use of a lawful permanent resident card belonging to another person in 1995. Counsel 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 in a section 212(i) waiver proceeding. Thus, hardship to the applicant's U.S. citizen daughter and U.S. citizen step-children 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, 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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence.

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, on April 20, 2001, the applicant married his spouse, [REDACTED]. [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] have a six-year old daughter who is a U.S. citizen by birth. [REDACTED] has a 25-year old son, a 20-year old daughter and a 15-year old daughter from prior relationships who are all U.S. citizens by birth. [REDACTED] mother had a devastating stroke in 2002 and is dependent upon her daughter. The record reflects further that the applicant is in his 30's and [REDACTED] is in her 40's.

Counsel contends that the applicant provides financial and medical benefits to [REDACTED] and her children. The applicant has been employed as a carpenter in the United States since 1998. Counsel submits medical documentation indicating that [REDACTED] mother suffered a stroke in 2002 and has secondary medical conditions such as diabetes, high cholesterol, hypertension, chronic back pain, peripheral vascular disease and osteopenia that leave her unable to care for herself. The medical documentation indicates that [REDACTED] is her mother's primary caretaker and her mother continues to be completely dependent on [REDACTED]. The medical documentation indicates that [REDACTED] mother's prognosis will worsen with time due to her age and secondary medical problems and she will remain dependent upon her family to care for her. [REDACTED] in her affidavit, states that she has had a hard time raising her children alone and the applicant has been her and her children's support in dealing with the financial and emotional difficulties they have suffered in connection with her splits from the children's biological fathers. She states that, as an only child, she is the only person who can care for her mother who requires full-time assistance with many aspects of her life. Due to the lack of assistance in the form of a nurse's aid, which is only available 4 hours per day, [REDACTED] now works the night shift and works only part-time to ensure someone is always with her mother. She states that her mother becomes easily confused and cannot be left alone due to her memory impairment. The record reflects that, even when [REDACTED] was employed on a full-time basis, she was unable to earn income sufficient to meet the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. Counsel asserts that, without the applicant's income and union benefits, [REDACTED] would be unable to survive financially and [REDACTED] would be without emotional support in her endeavors to care for both her children and her dependent parent. [REDACTED] states that if she relocates to Mexico, she would be unable to take her 15-year-old daughter with her because of a court-ordered agreement and that her mother would be unable to obtain the specialized medical care that she needs and receives in the United States. If she were to accompany the applicant to Mexico and leave her mother in the United States, [REDACTED] states that she and the applicant would be unable to earn sufficient income to support the family and pay for her mother's care in the United States.

Courts in the Ninth Circuit Court of Appeals have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The economic hardship [REDACTED] faces is not uncommon to alien and families upon deportation. However, this hardship, when combined with the emotional and financial hardships associated with her mother's deteriorating health and medical needs, is substantially greater than that which aliens and families would normally face upon removal. [REDACTED] does not have ties to Mexico and she has significant family ties in the United States, including her mother and children. A finding of extreme psychological hardship is the inevitable conclusion of the combined force of the submitted medical and financial documentation. 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 material misrepresentation for which the applicant seeks a waiver, a guilty plea to a traffic ticket and a sentence of two days in jail with three years of conditional release in connection with a charge of driving under the influence. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's spouse if the applicant were refused admission, his otherwise clean background, and the applicant's spouse, daughter's and stepchildren's significant ties to the United States.

The AAO finds that, although the immigration violation committed by the applicant was 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.