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FILE:

Office: SAN FRANCISCO DISTRICT OFFICE

Date: JUL 17 2007

IN RE:

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:

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver 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 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 and reside with her United States citizen husband and children.

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

On appeal, counsel contends that the applicant's husband, a citizen of the United States, would suffer extreme hardship if the applicant were required to return to Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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 states, in pertinent part, the following:

- (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.

A section 212(i) waiver of the bar to admission resulting from a 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).

The record contains several references to the hardship that the applicant's children would suffer if the applicant were to depart the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme

hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant or her children cannot be considered, except as it may affect the applicant's husband.

Thus, the first issue to be addressed is whether the applicant's return to Mexico would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

*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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant testified under oath that she entered the United States on or around January 1995, using a border-crossing card issued to another person. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. The applicant now refutes this, but her statements on appeal do not overcome the sworn statement taken at her permanent residency interview. Accordingly, the applicant is 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).

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 also contends that the applicant's husband would experience extreme hardship if the applicant were returned to Mexico, regardless of whether he accompanied her or remained behind in California.

The record contains documentation regarding the medical conditions of the applicant, her husband, and their youngest daughter. The applicant suffers from asthma and inflammatory arthritis<sup>1</sup> and will undergo a knee replacement procedure shortly. Her husband suffers from diabetes, scoliosis, chest pain, and arthritis. Their youngest daughter has been diagnosed with autism and mental retardation.

The AAO has carefully reviewed and considered each of the numerous letters, affidavits, medical records and reports, and other documents contained in the record in reaching its decision, and takes particular note of the affidavits from the applicant, her husband, and the family's medical service providers, as well as the extensive medical documentation contained in the file. The AAO notes that the applicant and her husband have well-established relationships with their medical service providers.

In her January 8, 2007 affidavit, the applicant states that she spends her days caring for her husband and daughters; that their youngest daughters' autism makes her job very difficult; that, without her assistance,

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<sup>1</sup> The applicant takes six separate medications to manage these conditions.

her husband would never be able to work at his job and look after their youngest daughter; that her husband's diabetes, scoliosis, and arthritis make his physically demanding work difficult enough, without having to care full-time for their developmentally delayed daughter; that preparing her daughters for school is a very demanding job as their youngest daughter cannot perform any tasks without assistance; that she prepares separate meals for her husband as he is diabetic; that she takes care of her husband in the evenings by preparing a saltwater soak and rubbing moisturizing soap into his feet and hands to prevent the skin-splitting common in persons with diabetes; and that preparing her daughters for bedtime is also a demanding job.

The applicant noted that their youngest daughter (who has been diagnosed with autism and mental retardation) is unable to pull a T-shirt over her head, put on her underwear, or squeeze toothpaste onto a toothbrush. She frequently becomes very frustrated and throws screaming temper tantrums if she does not like the way the applicant is doing things. Although she is seven years of age, she still does not speak in complete sentences. Rather, she communicates by yelling out single words and pointing with her finger. The applicant studies with the couple's youngest daughter and helps her with her homework, which she describes as an exhausting effort. The applicant states that she cannot turn her back on her daughter for a moment, as she constantly wants to grab for kitchen knives, electrical outlets, and the burning stove. If she takes her out in public, she must hold her hand tightly, as her daughter will run in the opposite direction and try to destroy merchandise or remove items from store shelves. At bedtime, she does not want to take a bath or put on pajamas, so meltdowns often occur.

The applicant states the following:

My entire existence in the United States, it seems, is to care for my ill husband and daughters, one of whom is severely handicapped. These are tasks that I gladly perform. I know that without me they would be unable to care for themselves.

Because of my husband's health problems and his long hours at work, he never would be able to care for [their youngest daughter] the way she needs it. Although I do not have a job outside our home, even I am often exhausted by her demands. It would be inconceivable for my husband to maintain his rigorous work schedule and his physical ailments and care for [their youngest daughter] at the same time. Further, his pay would not allow us to hire someone to care for [her].

In his January 8, 2007 affidavit, the applicant's husband states that given his youngest daughter's special needs, the demands of his own job, and his own health problems, his wife's removal would create extraordinary hardship for him; that, as a result of his youngest daughter's limitations, she requires constant, vigilant supervision and assistance that he would never be able to provide while continuing to work; that he has been diagnosed with diabetes, scoliosis, and arthritis; that loading and lifting concrete sixty hours per week puts additional strain on his health; that he notices every year that the work he had once performed easily becomes increasingly difficult; that the applicant monitors his health to make sure he eats properly and takes proper care of his skin and feet at night; and that his doctor has told him that he will soon be required to wear a back brace on a full-time basis.

The applicant's husband also takes special notes of the extra demands placed on the family as a result of their youngest daughter's diagnosis. He states that she was only recently toilet-trained; that she is often difficult to understand; that she is easily irritated when they do not understand her; and that she has frequent temper tantrums. He states that the applicant must watch their youngest daughter every second

of the day, as, if they turn their backs momentarily, she will pick up the most dangerous item lying around, even after repeated instructions not to do so. He reiterates that it is nearly impossible to take her out in public, as she will run away if not held tightly. He also reiterates his wife's recounting of the difficulties involved in getting their youngest daughter ready in the morning and for bedtime. He also states that, due to the amount of care and supervision she requires, the couple's youngest daughter would have to relocate to Mexico with the applicant. He worries, however, that any gains she has made in school would vanish in Mexico.

Finally, the applicant's husband states that he receives health insurance through his employment and his labor union for the entire family and that, given his family's health conditions, losing his insurance would have terrible consequences for the family. He states that if he were to find another, less all-consuming job (in the event that the applicant returned to Mexico and the children stayed behind in the United States) so that he could spend more time with their youngest daughter, the cost of health insurance for a forty-eight-year-old man with diabetes would be cost prohibitive.

The record contains extensive documentation regarding the couple's youngest daughter's diagnosis of autism and mental retardation. Such documentation consists of evaluations from school and medical personnel, medical reports, and her most Individualized Education Plan (IEP) for the period February 22, 2007 through February 22, 2008. The AAO notes, as does counsel, that the IEP specifically calls for "special door to door" transportation to school as well as a constant need for adult supervision. The record also contains documentation confirming the applicant's husband's medical conditions, including medical records as well as letters from doctors with whom he has an established doctor-patient relationship.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

As noted previously, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Hardship to the applicant or the couple's children cannot be considered, except as it may affect the applicant's husband.

The AAO finds that the applicant's husband would face extreme hardship if the applicant is required to return to Mexico. In this case, the applicant must establish that her husband would experience extreme hardship in three scenarios: (1) if the applicant's children and husband remain in the United States

without her; (2) if the applicant's children accompany her to Mexico but her husband remains in the United States; and (3) if the applicant's husband and children accompany her to Mexico.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's husband would experience extreme hardship if he and the children remained in California while the applicant returned to Mexico. Due to the extraordinary demands placed upon the family by the youngest daughter's disability, he would likely be required to find an alternate source of employment, as he currently works a demanding sixty-hour workweek, as well as locate a childcare provider who could provide the constant monitoring and supervision she requires. He would also lose the care that the applicant currently provides in managing his own medical conditions. He would also be required to provide additional financial support to the applicant, who would lose the health insurance coverage she currently receives. As noted previously, the applicant has health conditions of her own that require management, and her husband would have to pay for the cost of her treatment in Mexico. Thus, he would face hardship beyond that normally expected of one facing the removal of a spouse.

The applicant's husband would also experience extreme hardship if he remained in California while the applicant and the children relocated to Mexico. In addition to the financial drain he would experience upon supporting the applicant in Mexico, he would face the additional cost of maintaining his daughter's education and treatment in Mexico. Moreover, the youngest daughter's pediatrician [REDACTED] has opined that eliminating her current access to services for improving her speech and motor skills would severely limit any prospects for her future development. Limitations on his youngest daughter's future development ("a marked diminution of what she can achieve") would directly affect the applicant's husband in that she may be able to establish a certain degree of independence in the future if she is able to continue progressing (and thus "maximize her potential"). In the alternative, she may become utterly dependent upon the applicant and her husband as an adult. As all services are currently covered by his health insurance or provided via the public education system, the applicant would be required to pay a great deal more out-of-pocket for such services in Mexico.<sup>2</sup> Thus, he would face hardship beyond that normally expected of one facing the removal of a spouse.

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<sup>2</sup> Counsel has submitted literature regarding the state of the public education system in Mexico published by the United States Department of Labor and the Organization for Economic Cooperation and Development. The AAO accepts the proposition that the applicant's youngest daughter would not be able to receive the same level of services (speech therapy, occupational therapy, etc.) through the Mexican public education system that she presently receives through the Solano County Special Education Local Plan Area. The applicant's husband would be required to pay to obtain comparable services privately, if such services are available.

The applicant's husband would also experience extreme hardship if he accompanied the applicant and the children to Mexico. Although he was born in Mexico, the AAO notes that the applicant's husband has lived in the United States for twenty-seven years. The AAO here incorporates its discussion in the previous paragraph regarding the likely need to obtain special services for the family's youngest daughter privately. Given the pay disparity that exists between the United States and Mexico, it would be extremely difficult for the applicant's husband to locate sufficient employment that would permit the family to obtain these services. Moreover, he would likely be unable to obtain medical care for his various health problems comparable to his current care. For all of these reasons, he would face hardship beyond that normally expected of one facing the removal of a spouse.

Accordingly, 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 the applicant's husband would face if the applicant were to return to Mexico, regardless of whether he accompanied her or remained in the United States, United States citizen spouse and children, apparent lack of a criminal record, and the passage of twelve 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 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, this appeal will be sustained and the application approved.

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