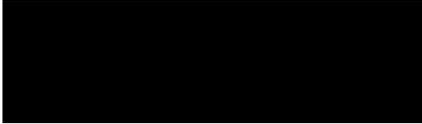


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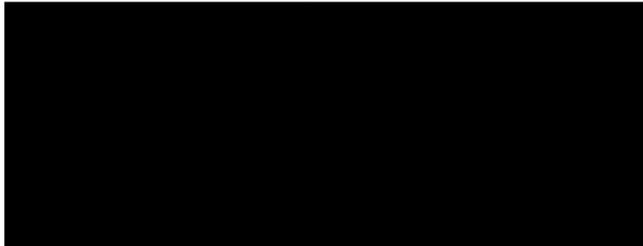
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IN RE:



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, Cleveland, Ohio and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nicaragua who was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen, and is the father of one U.S. citizen son and two lawful permanent resident daughters. 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 family.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 27, 2006.

On appeal, counsel contends that the District Director erred in denying the application and that the applicant's spouse would suffer extreme hardship if he were removed from the United States. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant and his spouse; employment letters from the applicant and his spouse; letters of support from friends; earnings statements for the applicant and his spouse; bank statements for the applicant; tax statements for the applicant and his spouse; published country condition reports; and a psychological evaluation for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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 record reflects that the applicant entered the United States without inspection in August 1993. *Statement from the applicant*, dated December 16, 2003. While he was in the United States, he boarded a domestic

flight with a ticket issued under the name "[REDACTED]" *Id.* According to the applicant, while he was on the plane, 25 Mexican nationals were arrested. *Id.* The applicant was asked his name, and he provided the name [REDACTED] to avoid being returned to Mexico. *Id.* The AAO notes that although a Form I-213, Record of Sworn Statement regarding the applicant was completed on August 29, 1993, the narrative part fails to explain the details of the apprehension. *Form I-213, Record of Sworn Statement.* The applicant was charged with entering without inspection and placed into immigration court proceedings. *See Order to Show Cause*, dated August 29, 1993. On January 18, 1994 the applicant filed a Form I-589, Application for Asylum under his true name of [REDACTED]. *Form I-589, Application for Asylum.* On the Form I-589, the applicant failed to mention his previous use of the name [REDACTED] or his prior immigration arrest. *Id.* On May 13, 1994 an immigration judge ordered the applicant removed in absentia under the name of [REDACTED]. *Order of the Immigration Judge*, May 13, 1994. On July 11, 1994 the Immigration and Naturalization Service (now Citizenship and Immigration Services) denied the applicant's asylum application under his true name of [REDACTED]. *Denial letter*, dated July 11, 1994. On March 22, 2000 the applicant filed a Form I-485, Application to Adjust Status to Lawful Permanent Resident under his true name of *Shaney Barahona Lopez* in which he stated that he had never been deported from the United States and that he had never willfully misrepresented a material fact to obtain an immigration benefit. *Form I-485.* On March 27, 2006, the District Director denied the applicant's Form I-485 and Form I-601 waiver application. *Decisions of the District Director*, dated March 27, 2006. Based on the applicant's omissions and false statements made on the Forms I-589 and I-485, the AAO finds that the applicant attempted to procure admission into the United States by fraud or willful misrepresentation of a material fact and is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the inadmissibility imposes extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant himself or his children would experience upon his removal is not directly relevant to the determination of his eligibility for a waiver under section 212(i). The only hardship relevant to the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed. Hardship to the applicant's children will be considered to the extent that it affects the applicant's spouse. If 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, 565-566 (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 a 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 qualifying relative must be established in the event that she resides in Nicaragua or 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Nicaragua, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Russia and she and the applicant spent some time living in the Ukraine. *Statement from the applicant's spouse*, dated December 16, 2003. The parents and only sibling of the applicant's spouse live in the Ukraine. *Psychological Evaluation from [REDACTED]*, dated May 22, 2006. The applicant's spouse stated that the financial stability of her family would be shattered by a move to Nicaragua. *Statement from the applicant's spouse*, dated December 16, 2003. She asserted that she would not be able to work, as she is a woman without employment experience in Nicaragua and unable to continue with her schooling. *Id.* In support of her assertions, the record includes published country condition reports regarding employment statistics and women in Nicaragua. *See Library of Congress Reports, Nicaraguan Unemployment and Women in Nicaragua*. Unemployment in Nicaragua is officially around 12.2%, and another 35.4% are underemployed. *Background Note: Nicaragua, U.S. Dept. of State*, November 2005. The applicant and his spouse have three children to support, ages 16, 15, and 6. *Form I-485*. While the AAO notes that the applicant's children are not qualifying relatives in this particular case, it acknowledges the financial impact they have upon the applicant's spouse. Given the lack of familial and cultural ties to Nicaragua and potential language barriers, the AAO recognizes the difficulties the applicant's spouse would have in obtaining a job in Nicaragua and the impact this would have upon her family's financial well-being. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Nicaragua.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse grew up in Russia and her parents and sibling live in the Ukraine. *Psychological Evaluation from [REDACTED]*, dated May 22, 2006. The applicant's spouse works as a telemarketing agent for the company AnswerNet-Fairlawn. *Employment letter for the applicant's spouse*, dated May 9, 2006. The Quality Assurance Coordinator for AnswerNet-Fairlawn asserts that even with full-time hours, the applicant's spouse would be close to or under the poverty level as a single parent for a family unit of four. *Id.* While the AAO does not find that the applicant would be unable to contribute to his family's financial well-being from Nicaragua as he is physically fit to work, it notes that Nicaragua remains the second-poorest nation in the hemisphere. *Background Note: Nicaragua, U.S. Department of State*, dated November 2005. As previously stated, unemployment in Nicaragua is officially around 12.2%, and another 35.4% are underemployed. *Id.* In 2002, the applicant earned \$41,687.22 while his spouse earned \$11,605.88. *See 2002 W-2 and Earnings Summary for the applicant and his spouse*. The AAO finds that the record demonstrates that even if the applicant were able to find employment in Nicaragua, it is unlikely that he would be able to earn the equivalent of what he earns in the United States. While the applicant's children are not qualifying relatives for this particular case, the AAO recognizes the added expenses of having three minor age children and the financial impact this would have upon the applicant's spouse. This financial impact is heightened by the fact that the applicant's spouse is originally from Russia and does not have any immediate family members in the United States who could assist her with some of the child-caring responsibilities. The applicant's spouse states that it is unacceptable for the applicant to reside in Nicaragua while she remains in the United States for she and the applicant have a very close and loving marriage, and she and the applicant are very attached to their children. *Statement from the applicant's spouse*, dated December 16, 2003. According to a psychological evaluation, the applicant's spouse does not have the

emotional strength or psychological resources at this time to endure an exacerbation of her depression by being separated from the applicant. *Psychological Evaluation from* [REDACTED], dated May 22, 2006. While the record fails to reflect an ongoing relationship between the mental health professional and the applicant's spouse, thus diminishing the mental health professional's findings as they were based on a single interview, the AAO does acknowledge the applicant's spouse's lack of family ties in the United States and thus reduced emotional support system. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

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).

The adverse factors in the present case are the applicant's prior misrepresentations for which he now seeks a waiver.

The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission, his supportive relationship with his spouse, his consistent work history, his payment of taxes, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant are 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.