

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

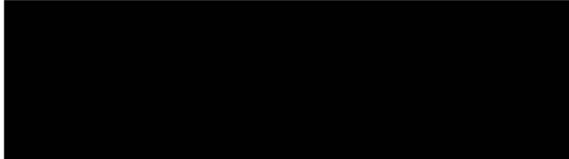
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529-2090  
MAIL STOP 2090



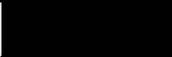
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H2



FILE:



Office: CHICAGO, IL

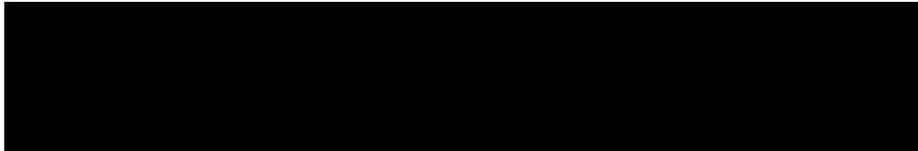
Date: DEC 03 2008

IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois 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 is a native and citizen of Mexico. The record indicates that in December 2004, the applicant provided sworn testimony that he entered the United States on or about August 1999 using a fraudulent Alien Registration Card. The applicant was thus 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), for having procured entry into the United States 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 with his U.S. citizen spouse and two children, born in 2000 and 2002.

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 (Form I-601) accordingly. *Decision of the District Director*, dated January 3, 2006.

In support of this appeal, counsel submits, inter alia, a brief, dated March 2, 2006; an affidavit from the applicant's spouse, dated March 10, 2005; an affidavit from the applicant's spouse's sister, dated February 13, 2006; an affidavit from the applicant's spouse's brother, dated February 14, 2006; medical and academic information relating to the applicant's child, [REDACTED]; information about country conditions in Mexico; and financial information relating to the applicant and his 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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 record contains several references to the hardship that the applicant's U.S. citizen 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. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse.

*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. 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.

In support of the waiver, the applicant's U.S. citizen spouse asserts that she will experience extreme hardship were the applicant removed from the United States, as she needs the applicant to remain in the United States to assist with the care of their two U.S. citizen children. As she states:

I personally would suffer greatly due to the hardship I would endure in being unable to care for my two sons. I could not survive without [REDACTED] [the applicant's] economic, emotional and psychological support....

As background, when [REDACTED] [the applicant's child] was about six months old, we noticed he was turning his head to one side only. We took him to a pediatrician...who said his head was slanted on one side. He referred us to a specialist in Oak Brook, who fitted [REDACTED] with a doc band, which helps in reshaping the skull... [REDACTED] wore that for six months until he was fitted with a new one, which he had to wear for another six months....

At about the same time he started wearing the second doc band, [REDACTED] began physical therapy and had to continue it until he was able to walk a few months later. I had taken off eight months from work to attend to my son's needs. Even after I returned to work, however, [REDACTED] still had problems with his left side, so I would take time off as needed to continue his therapy at home as the doctor had recommended, and based on what physical therapist taught me.

We continued following up regularly with the doctor to make sure [REDACTED] was on the right track. I was fortunate that [REDACTED] was working to support the family during this time because otherwise I would have had to choose between

making ends meet and giving my son the care he needed. No parent should have to make such a decision—just surviving when your child has such a condition is hard enough without having to worry about if you'll have enough money for your daily needs.

When [REDACTED] was about two and a half years old...we started noticing that he began slurring his speech and stuttering. We contacted a speech therapist, who recommended finding a special school for him. The problem was that he wasn't old enough—I couldn't find a program which focused on speech therapy until Kindergarten. That was two years ago.

Recently, through a family friend, I finally did find a school close to our house that had a special education speech therapy program. I was put on a waiting list, and we just had our first appointment with them last month. After testing his vision, speech and hearing, they told us that [REDACTED] would qualify for services....

I do know that the class would be two hours per day. I am now trying to work a schedule out with my work, because the school is in Belvidere where we live (you qualify for special education in the school district in which you live), and I work in Elgin which is 45 minutes away....

If [REDACTED] would be forced to leave the U.S. now, however, I would be unable to attend to my son's issues because I would have to continue to work full time and maybe even look for a second job to make ends meet. We currently own a house in Belvidere where there are lots of families and other kids to play with. It is a safe neighborhood across the street from a school and also close to the school [REDACTED] would go to for his special education (which would continue once he gets to Kindergarten). But these programs are only partial day programs and, with my current job alone I would be unable to pick him up after school or afford day care.

I have a great job a [sic] Verizon Wireless in Elgin, as a customer service representative. I consider this a great job because of the potential to move up.... I started there in July 2004, but must wait nine months to apply for the next position of coordinator or supervisor. I am anxiously waiting for April so I can apply for a better position within Verizon.... My move to Verizon was definitely the first step in a long term career goal with a good, established company.

Verizon also has a tuition reimbursement program and a program where the colleges come to teach classes at our worksite. I plan to take advantage of that program as well, and want to concentrate in speech therapy so I can further assist my son with his problems. Verizon also has a comprehensive benefits package for our whole family.

Even though both of us work, [REDACTED] contributes more to the household income and my job provides the benefits. This includes benefits under the Family and Medical Leave Act which, after one year with the company, will allow me to attend to my son's medical condition without risking my benefits, my job, or my potential to move up. The main item the Family and Medical Leave Act does not require, however, would be pay during my time off.... For this reason, if my son's condition requires it, [REDACTED]'s pay would allow us to at least pay our bills during the time I would be off.... In the past when I had to take off eight months due to [REDACTED]'s condition, it was [REDACTED]'s income that got us through that time.

My own family also would be unable to help. My father recently moved to Texas.... My older sister has five kids herself, and I have to help her out economically.... My other sister has two kids herself and works full time at Verizon as well....

I probably would have to send money to him [the applicant] in Mexico like he currently does with his father. [REDACTED] and his brothers recently had to send money to his father for an emergency surgery he required....

I really don't know how I would do it and cry every time I think about it. Would I have to get public assistance? Would I have to quit my great job and get one closer to home? Would I have to sell our house and leave the great neighborhood that my kids have become accustomed to? Would I have to get a second job? Would my son not be able to get the help he needs? It is hard enough to be a parent of two small children. Add to that the stress of having a child with special needs. And to that the thought of losing your husband? It's really too much to bear for me right now....

I am a strong believer that a strong family unit, in addition to the medical and educational assistance my son requires, is an important element in any therapy. If daddy is not here, then it is possible that [REDACTED] won't respond to his therapy, making daily life all that harder for me as a mother....

*Affidavit of [REDACTED], dated March 10, 2005.*

Documentation to corroborate the applicant's spouse's statements regarding the family's finances, her son's medical and academic situation, and the lack of a family network that would be able to assist her should the need arise, has been provided by counsel. As such, based on the record, the AAO has determined that the applicant's U.S. citizen spouse would experience extreme hardship if she remained in the United States while the applicant returned to Mexico. Due to the demands placed upon the family by [REDACTED]'s medical condition and academic disabilities, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner to two young children, one with disabilities, without the complete emotional,

physical, financial and psychological support of the applicant. In addition, due to the young age of the children, the applicant's spouse would need to obtain a childcare provider who could provide the monitoring and supervision the children require while the applicant works outside the home longer hours, a costly proposition for the applicant's spouse.

Alternatively, the applicant's spouse would be required to find employment with a reduced work schedule were the applicant removed, as the applicant would no longer be residing in the United States and assisting in the care of the two children. Any alternate employment position would pay less as she would be working fewer hours, and would increase the likelihood of a loss of benefits and/or career advancement. The applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse. As such, were the applicant removed, the applicant's U.S. citizen spouse would suffer extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's spouse asserts as follows:

My entire family (with the exception of my father who just moved to Texas) and I live in Illinois—my two children, one brother, two sisters, and seven nieces and nephews....

To move to Mexico would be just as devastating for me, if not worse. [REDACTED] is from a very small town.... His father lives there, and sells tamales from a plaza in the town. His mother died when he was two years old. It is a very rural area, with no paved roads. [REDACTED] completed school through his sophomore year in high school. For the kids in his town, it is quite typical not to finish school. There is no work around there, and that is why he came to the United States in the first place....

If we would return to Mexico with [REDACTED], [REDACTED] would receive no assistance for his speech problems and we would have no way to make a living.

*Id.* at 1, 5.

Given the pay disparity that exists between the United States and Mexico, as documented by counsel, and [REDACTED] need for constant monitoring, physical therapy, and speech therapy, based on suffering from torticollis and plagiocephaly, it would be extremely difficult for the applicant's spouse and/or the applicant to locate employment that would permit the family to obtain the medical services and care needed. Limitations on [REDACTED]'s future development based on a move to Mexico would directly affect the applicant's spouse in that [REDACTED] may be able to establish independence in the future if he is able to continue progressing, despite his medical and academic situation. In the alternative, [REDACTED] may become utterly dependent upon the applicant and her spouse if positive progression ceases, which would likely occur if the entire family relocated to Mexico.

In addition to the concerns related to [REDACTED] and their impact on the applicant's spouse, the record indicates that the applicant's spouse has no ties to Mexico, nor is she fluent in the Spanish language. Relocating to Mexico would mean leaving her home country, her family, gainful employment with benefits and promotion potential, financial security, and continued monitoring and treatment for her son's medical conditions by professional familiar with her son's conditions. 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 U.S. citizen spouse would face if the applicant were to return to Mexico, regardless of whether she accompanied the applicant or remained in the United States, U.S. citizen children, the medical conditions suffered [REDACTED], property ownership, lack of criminal convictions, the presence of the applicant's spouse's U.S. citizen siblings, nieces, nephews and father, letters of support provided by community members on behalf of the applicant, the payment of taxes and the passage of over nine years since the applicant's immigration violation. The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in procuring admission to the United States and his unauthorized presence and employment in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's 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.