

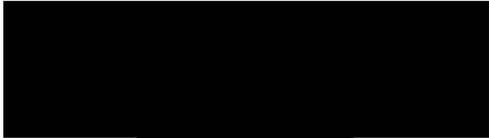
Identifying information is redacted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2



FILE

Office: CHICAGO, IL

Date:

DEC 29

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico. The record indicates that at her I-485 interview on October 28, 2003, the applicant provided sworn testimony that she entered the United States on or about August 1994 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 is married to 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 reside in the United States with her U.S. citizen spouse and children.¹

The acting 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 Acting District Director*, dated February 27, 2006.

In support of the waiver request, counsel submits a brief, dated April 26, 2006 and copies of documents previously submitted with the Form I-601. 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

¹ The record establishes that the applicant and her spouse have two biological children, born in 2000 and 1992. In addition, the applicant is step-parent to the applicant's spouse's children from a prior marriage, born in 1989, 1987 and 1982.

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...

To begin, numerous references are made to the hardships the applicant's U.S. citizen children would face were the applicant removed. Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(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. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their U.S. citizen 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 he will experience extreme hardship were the applicant removed from the United States, as he needs the applicant to remain in the United States to assist with the care of their U.S. citizen children and to support him as he establishes his own landscaping business. As the applicant's spouse states,

My wife [the applicant] and I have a total of five children, two from our marriage and three from my previous marriage. Since I have full custody, all five children live and reside with my wife and I. Their names are as follows: [REDACTED], age 4.. [REDACTED] age 12... [REDACTED] age 14.. [REDACTED] age 16...and [REDACTED] age 21.... All five children are United States citizens....

I love my wife very much, and it has been an emotional roller coaster to imagine being without her on a daily basis. During the last nine years, my wife and I have lived together in the U.S. with our five children. Although the three oldest children are from my first marriage, they have always lived with me and as I have full custody of them. Nevertheless, my wife has always cared, raised and been responsible for my three oldest children as if they were her own biological children. We have progressed as a family and have cemented a foundation of trust, love and respect for each other. Together, my wife and I are a team that works to prosper with our

five children. Living in the U.S., my wife and I have realized how difficult it is to succeed in Mexico compared to the living conditions in the U.S. By working hard together, my wife and I have been able to purchase our own home, pay are [sic] bills and provide a 'good life' for our children. My wife and I have learned to share the work of looking after our children while building our own landscaping business....

My wife is a vital part of our family. She is the one that keeps us all running smoothly. She is the one that helps me organize my work and keeps the children well taken care of and is the everyday keeper of what is going on in their lives. Without her in my life, my family and I would be put into a chaotic spin. I depend on her more than any other person in this world. I know that without her I would be lost with our children and we would not be able to work as much or as efficiently. I truly hope that you see that without her my family and I would be emotionally, mentally and economically devastated. It would be too much of a hardship to be a single parent to five children as well as trying to work as hard as I can to run our business. I am constantly depressed thinking about how hard live [sic] would be without the love and support of my wife, while becoming increasingly anxious and stressed about economic well-being of my family. Without her here in the U.S., it would be too difficult to make our mortgage payments, credit card bills, and various utility bills. Furthermore, to support my five children in the U.S. and my wife in Mexico, I feel that my economic situation is going to become a disaster. Furthermore, I am concerned that the current economic, political and social situation in Mexico will have a negative impact on my wife. The living conditions in Mexico compared to the conditions in the U.S. are dreadful.

I can't imagine the pain and suffering of seeing my children suffering due to the loss of their mother. My wife is a very loving and caring person, a person that my children look up to, who they confide and trust in, a person who they love and go to for advise [sic]. Without...their mother here to go to, they are constantly suffering and also become anxious about. Seeing my children suffer in this way as a father is very difficult and causes me much hardship. Especially now that we have three children in the 'teenage' years, it is extremely important to have two parents to go to for advise [sic] and help. Lastly, my son [REDACTED] suffers from asthma and my wife has always been the person to make sure that he takes his medicine and takes him for his medical check ups. This too would be an added hardship to our family....

The applicant further elaborates on the hardships her U.S. citizen spouse will face were the applicant removed from the United States. As she asserts,

First of all, my children, ages 21, 16, 14, 11, and 3 would suffer great mental anguish at the prospect of a denial and my consequent deportation. My children are very close to me and especially my two youngest children, [REDACTED] and [REDACTED]. [REDACTED] being so young is always with me since my husband is always working and I am the one who stays home with the children and for the same reason it is I who monitors and administers [REDACTED]'s medicine—he is asthmatic. My older children also depend greatly on me to help them now that they are becoming ‘little’ adults and are running into more serious issues in their lives. I serve as a person that they turn to for guidance in their lives.

Secondly, because my husband is self employed and just starting out he depend on me to organize his jobs and help him administer him [sic] company. Without my presence more of the paperwork would fall on him and he would not be able to work as many ‘jobs’ and so he would not be able to make as much money. And being that he has only had his company for two + years it would greatly handicap him in the progress and survival of the company. Obviously, the economical well being of his company will determine the economical well being of our family and his ability to support them and our home.

Thirdly...my deportation would force my husband seek outside day care for my youngest because we do not have any immediate family that would be able to help us. The prospect of being taken care of by a total stranger would be traumatic for my youngest and would also put a tighter economical ‘squeeze’ on the financial situation at home....

Affidavit of [REDACTED], dated January 23, 2004.

Based on the above statements and the documentation provided by counsel, the AAO concludes that the applicant’s U.S. citizen spouse would encounter extreme emotional, professional and financial hardship were the applicant to relocate abroad while he remains in the United States. Due to the demands placed upon the family by five children, the applicant’s spouse would be required to assume the role of **primary caregiver and breadwinner**, while ensuring the continued financial viability of his business, [REDACTED], without the complete emotional, physical and financial support of the applicant. His hardship if he remained in the United States without the applicant would go significantly beyond that normally suffered when a spouse is removed due to inadmissibility.

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 has not asserted any reasons why the applicant's U.S. citizen spouse is unable to relocate to Mexico, his native country, to accompany the applicant were she removed.

A review of the documentation in the record, when considered in its totality reflects that although the applicant has established that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant relocated abroad, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if he were to accompany the applicant abroad were she removed. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.