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U.S. Citizenship
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Services

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FILE:



Office: CHICAGO, IL

Date:

JAN 02 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 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 at her I-485 interview on August 30, 2005, the applicant provided sworn testimony that she entered the United States on or about August 1990 using a fraudulent Alien Registration Card purchased from an individual in Mexico. 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 lawful permanent resident 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 lawful permanent resident spouse and three U.S. citizen 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 29, 2005.

In support of the waiver request, counsel submits a brief, dated February 22, 2006; an affidavit from the applicant's spouse and evidence of his lawful permanent resident status; a copy of the applicant's marriage certificate; the applicant's three sons' U.S. birth certificates; articles regarding the benefits and value of healthy marriages and two parent households; documentation regarding the applicant's children's enrollment and involvement in school and church activities; copies of the Individualized Education Program annual review sheets regarding two of the applicant's children, [REDACTED] and [REDACTED] financial documents, property ownership evidence and bills relating to the applicant and her spouse; an employment confirmation letter for the applicant's spouse; copies of the applicant's tax returns for 2002, 2003, 2004 and 2005; evidence regarding the applicant's spouse's orthopedic condition and treatment and evidence of payments received through workers compensation with respect to his condition; evidence of the applicant and her spouse's family's members' status in the United States; photographs of the applicant and her family; and evidence of the applicant's spouse's filing of the Form N-400, Application for Naturalization. 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...

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 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 three U.S. citizen children. As the applicant's spouse states "... [the applicant] continues to stay home and care for our sons. She walks them to school and picks them up each day. Jose is now 14 years old...He is a little behind in school, and goes to the parent/teacher conferences for updates on his learning...At home, we constantly work to motivate him to work hard...Our son, is now 12 years old... Our son, is now 7 years old...It would be extremely difficult to me to manage without the assistance of my wife. She is the one who stays home to take care of my children while I work. Without her, it would be difficult for me to continue working the long and varied hours I work...And with a work schedule that is constantly changing, it would be difficult to find someone to help me take care of my sons. I also would not be able to afford to pay someone to watch them, send money to my wife in Mexico, manage to pay our mortgage and fully support my sons..." *Affidavit of* , dated February 17, 2006.

Copies of Individualized Education Program annual review sheets for the 2004-2005 school year evidencing that two of the applicant's sons, and , suffer from learning and/or speech/language disabilities are provided to corroborate the applicant's spouse's statements. The information provided confirms that has been diagnosed with Learning Disabilities and Speech/Language Impairments and has been diagnosed with Speech/Language Impairments. *Individualized Education Program Information for and*

Based on the record, the AAO has determined that the applicant's spouse would experience extreme hardship if he and the children remained in the United States while the applicant returned to Mexico. Due to the demands placed upon the family by's and's disabilities, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner to three young children, two 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 constant monitoring and supervision the children require while the applicant works outside the home, 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 three children. Any alternate employment position would pay less as he would be working fewer hours, and would increase the likelihood of a loss of benefits, including life insurance and retirement benefits. 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 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. Counsel states that were the applicant's spouse to accompany the applicant abroad, the applicant's spouse "...would lose his right to live in the United States by abandoning his lawful permanent resident status by not residing in the United States...he would be separated from his lawful permanent resident parents and lawful permanent resident and United States citizen siblings, nieces and nephews. Moreover, not only would [redacted] [the applicant's spouse] be leaving his extended family and home in the United States. He would also be leaving his career, friends, church and community. [redacted] has not lived in Mexico since he was 16 years of age. For those reasons, [redacted] have no contacts or job opportunities in Mexico..." *Brief in Support of Appeal*, dated February 22, 2006. Based on the applicant's spouse's potential loss of his lawful permanent resident status and the emotional and financial hardships he would face were he to relocate to Mexico with the applicant, 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 spouse would face if the applicant were to return to Mexico, regardless of whether he accompanied the applicant or remained in the United States, the U.S. citizenship status of the three children, the learning disabilities suffered by two of the applicant's children, the applicant's apparent lack of a criminal record, property ownership, the payment of taxes and the passage of over seventeen 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 seeking to obtain admission to the United States and unauthorized presence 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.