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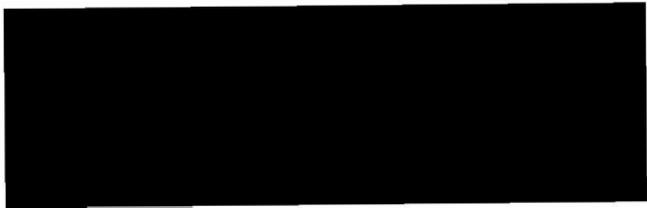
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IN RE:



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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing that she is a U.S. citizen for the purpose of obtaining a benefit under the Act (admission to the United States.) 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 her permanent resident mother.

The district director concluded that the applicant 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 District Director*, dated April 20, 2006.

On appeal, counsel for the applicant states that the applicant has provided sufficient evidence to show that her permanent resident mother will suffer extreme hardship if she is compelled to depart the United States. *Brief from Counsel*, dated May 19, 2006.

The record contains a brief from counsel; statements from the applicant, the applicant's mother, the applicant's daughter, and the applicant's siblings; a summary of the applicant's mother's economic needs; medical documentation for the applicant's mother; receipts reflecting payments made by the applicant for her mother's expenses; documentation of the applicant's employment and compensation; a copy of the Form I-551 permanent resident card for the applicant's mother; a copy of the death certificate for the applicant's father; reports on conditions in Mexico; birth records for the applicant and her daughter, and; documentation relating to the applicant's attempted entry to the United States under the claim that she is a United States citizen. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

- (ii) Falsely claiming citizenship. –

- (I) In General –

- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

Applicants who made a false claim to U.S. citizenship prior to September 30, 1996 are eligible to apply for a waiver of inadmissibility under section 212(i) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The record reflects that on March 23, 1982, the applicant attempted to enter the United States at San Luis, Arizona by claiming that she was a United States citizen. She presented a U.S. birth certificate that belonged to her step-daughter. Thus, the applicant made a false claim to U.S. citizenship for the purpose of obtaining a benefit under the Act (admission to the United States.) Therefore, the applicant was found inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii). The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from 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 hardship suffered by the applicant's mother. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

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).

On appeal, counsel asserts that the applicant has provided sufficient evidence to show that her permanent resident mother will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated May 19, 2006. Counsel states that the applicant provides assistance for her 84-year-old mother. *Id.* Counsel explains that the applicant's mother only has one brother in Mexico, thus she would be without significant family connections and support should she relocate there with the applicant. *Id.* at 3. Counsel asserts that the applicant provides financial support for her mother, thus her mother would suffer economic hardship should the applicant depart. *Id.* Counsel contends that the applicant's siblings in the United States are unable to provide sufficient support for the applicant's mother. *Id.* Counsel notes that the applicant's mother suffers from arthritis and depression, as evidenced by new documentation submitted by the applicant. *Id.*

The applicant's mother states that she has resided in Parker, Arizona for 25 years, and that she does not wish to move. *Statement from Applicant's Mother*, dated May 14, 2006. She explains that her deceased husband is buried there, and the applicant takes her to visit the gravesite twice each week. *Id.* at 1. She states that the applicant helps her pay approximately half of her expenses, and that she subsists on social security. *Id.* She provides that she does not wish to be separated from the applicant. *Id.*

The applicant submitted an account of her mother's monthly expenses that reflects that she pays approximately half of her mother's requirements. *Applicant's Mother's Expenses*, undated. The applicant further provided receipts for her mother's rent for six months that were issued to both the applicant and her mother. *Rent Receipts*, dated November 2004 to April 2005.

The applicant submitted a letter from a medical center that reflects that her mother was diagnosed with rheumatoid arthritis in 1997, and she is being treated for depression due to the recent death of her husband. *Letter from Parker Medical Center*, dated May 15, 2006.

The applicant's brother, [REDACTED], stated that, although he resides in Parker, Arizona, he has difficulties within his immediate family which prevent him from offering assistance to the applicant's mother.

Statement from [REDACTED], dated May 11, 2006. He indicated that the applicant's mother's well-being depends largely on the applicant's assistance. *Id.* at 1.

The applicant's sister, [REDACTED] explained that she resides in Parker, Arizona, but that she expected to relocate to Phoenix, Arizona in the Summer of 2006. *Statement from* [REDACTED], dated May 11, 2006. She stated that she is unable to take the applicant's mother with her due to her own family obligations, thus she would be unable to provide significant help to the applicant's mother. *Id.* at 1. She indicated that the applicant is the best person to help the applicant's mother. *Id.*

Another of the applicant's sisters, [REDACTED], explained that the applicant cares for their mother, which is a great benefit to the entire family. *Statement from* [REDACTED], dated May 15, 2006. Another of the applicant's brothers, [REDACTED], provided that he resides in California. *Statement from* [REDACTED] dated May 15, 2006. He proffered that the applicant is an unselfish, caring and hardworking individual who provides the care and company their mother requires. *Id.* at 1.

Upon review, the applicant has submitted sufficient evidence to show that her mother relies on her for assistance. The statements from the applicant's family are sufficient to show by a preponderance of the evidence that the applicant is the primary person who assists her elderly mother. Given the applicant's mother's health needs, including arthritis and depression due to the recent death of her husband, as well as her economic needs due to an income shortfall, it is evident that she benefits greatly from the assistance given by the applicant. The record supports that the applicant pays a significant portion of her mother's monthly expenses, and that she provides companionship to her mother during a difficult emotional period after the death of her father. The AAO is persuaded that the applicant's siblings are unable or unwilling to provide significant care for the applicant's mother, such that the applicant's absence from the United States would cause substantial hardship for her mother should her mother remain alone. The applicant has shown that, should her mother be compelled to reside in the United States without the applicant's assistance, she would endure hardship significantly above that which would ordinarily be expected of an individual whose relative is deported. The AAO finds that this hardship rises to the level of extreme hardship, as contemplated by section 212(i)(1) of the Act.

The applicant has shown that her mother would experience extreme hardship should she relocate to Mexico to maintain unity with the applicant. The applicant's mother has resided in Parker, Arizona for 25 years, and her recently deceased husband is buried there. At the age of 84 and with physical and emotional health problems, leaving her hometown and relocating abroad would represent a significant upheaval in her life. The applicant's mother has one elderly brother in Mexico who is ill, and she indicated that she wishes to remain with her extended family in the United States. Separating her from her other children and grandchildren represents a significant emotional hardship, particularly considering she is coping with the death of her husband. While the applicant has not clearly stated whether her mother has assets or economic resources in addition to her monthly social security income, the applicant has shown by a preponderance of the evidence that her mother is unable to meet her needs in the United States alone, such that the cost of relocating to Mexico would be a significant burden. The AAO acknowledges that the applicant's mother would have great difficulty working in Mexico should she need to supplement her income. It is understood that the applicant would have challenges financially assisting her mother should the applicant relinquish her employment in the

United States and seek a new position in Mexico. Based on the foregoing, the AAO finds that the applicant has shown that her mother would experience extreme hardship should she relocate to Mexico.

When considered in aggregate, the factors of hardship to the applicant's mother, should she remain in the United States without the applicant or relocate abroad, constitute extreme hardship. Based on the foregoing, the AAO finds that the applicant's mother will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if she is required to depart the United States.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The positive factors in this case include:

The applicant has family ties to the United States, including her permanent resident mother, numerous siblings, and her children; the applicant's mother would suffer extreme hardship if the applicant is compelled to depart the United States; the applicant has provided care and assistance to her mother; the applicant has maintained employment in the United States, and; the applicant has not been convicted of any crimes or committed further immigration violations since her single offense in 1982, approximately 26 years ago.

The negative factors in this case consist of the following:

The applicant made a false claim to U.S. citizenship in order to attempt to gain entry to the United States and has lived and worked in the United States without authorization.

While the AAO does not condone the applicant's immigration violations, it finds that the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden to show that she merits approval of her application.

ORDER: The appeal is sustained.