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U.S. Citizenship  
and Immigration  
Services

#2

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK, NY

Date: **FEB 06 2009**

and [REDACTED] RELATE)

IN RE:

[REDACTED]

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:

[REDACTED]

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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant has a lawful permanent resident mother and two U.S. citizen children. 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 on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 2, dated December 18, 2007.

On appeal, prior counsel asserts that the district director failed to consider all of the compelling factors. *Form I-290B*, received January 17, 2008.

The record includes, but is not limited to, prior counsel's brief, the applicant's mother's statements, the applicant's statements, the applicant's son's medical records and letters, and country conditions information on Honduras. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 2, 1992, the applicant represented himself as a U.S. citizen in an attempt to procure admission to the United States. As a result of this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act.

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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Therefore, in the present case, hardship experienced by the applicant or his children is relevant only to the extent it causes hardship to 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 (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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's mother must be established whether she relocates to Honduras or remains in 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 first part of the analysis requires the applicant to establish extreme hardship to his mother in the event that she relocates to Honduras. Prior counsel states that all of the applicant's mother's children reside in the United States and she has no close ties to Honduras. *Form I-290B*, at 2. The AAO notes that Honduras is currently listed as a country whose nationals are eligible for Temporary Protected Status due to the damage done to the country from Hurricane Mitch and the subsequent inability of Honduras to handle the return of its nationals. 73 Fed. Reg. 57133, 57134 (Oct. 1, 2008). Under the TPS program, citizens of Honduras are allowed to remain in the United States temporarily due to the inability of Honduras to handle the return of its nationals due to the disruption of living conditions. *Id.* As such, requiring the applicant's lawful permanent resident mother to relocate to Honduras in its current state would constitute extreme hardship to her.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his mother remains in the United States. The applicant's mother states that she communicates on a daily basis with the applicant, he visits her with his family, he pays for her to visit him in New York, he sends her money, she stays with her daughter and the applicant's money lifts some of the financial burden on her daughter. *Applicant's Mother's First Statement*, at 2, dated November 7, 2007. Prior counsel states that the applicant's mother is very worried and concerned about her grandson and his fate in Honduras, she believes he cannot receive the medical attention he needs in Honduras, separation would cause her great emotional distress, she would not be able to visit as frequently as she does now and she would lose the close connection that they have developed over the years. *Prior Counsel's Brief in Support of Appeal*, at 2, dated February 12, 2008.

The applicant's mother states that she is very close to her grandson, there is no way the doctors in Honduras can treat his conditions, her health was compromised in Honduras as a result of a less serious condition, her grandson is a sick child and will deteriorate immediately upon arriving in Honduras, and this terrible situation will cause emotional devastation to her. *Applicant's Mother's Second Statement*, dated January 28, 2008. Prior counsel states that the applicant's eight year old son was born with a heart defect, is closely monitored by a cardiologist, has a heart murmur, recently suffered seizures, is seeing a neurologist and takes medication every day to prevent the seizures. *Prior Counsel's Brief in Support of Appeal*, at 2. The record reflects that the applicant's son has a seizure disorder, has been receiving treatment with Tegretol, has not had a seizure since starting Tegretol, the prognosis for his seizure disorder is not clear and treatment with antiepileptic drugs will be continued. *Letter from [REDACTED]*, dated January 8, 2008. The applicant's son is also being treated at a cardiology clinic for complete transposition great vessel s/p repair and at an endocrinology clinic for exogenous obesity. *Letter from [REDACTED]*, dated January 8, 2008.

Counsel states that Honduran children are routinely brought to the United States for heart surgery and care, there would be no need for this if adequate care were available in Honduras and the applicant would not be able to adequately support his family in Honduras. *Prior Counsel's Brief in Support of Appeal*, at 3. The record includes articles on Honduran children who have come to the United States for treatment of heart problems. The record reflects that medical care in Honduras varies greatly in quality and availability. *Department of State, Country Specific Information, Honduras*, at 7, dated October 12, 2007. Although the record does not contain specific evidence that the applicant's son could not receive treatment in Honduras, it finds that the applicant's son has serious medical problems, the general level of medical care in Honduras is less than the United States and he would be residing in a country devastated by natural disaster. The AAO finds that the applicant's mother is very close to the applicant's son and would experience serious emotional hardship if he relocated to Honduras in his current state. As such, the AAO finds that the applicant's mother would experience extreme hardship in the event that she remains in the United State without the applicant.

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).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence

of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant’s misrepresentation, his unauthorized period of stay and his unauthorized employment.

The favorable factors include the applicant’s U.S. citizen mother and two children, his lack of a criminal record, extreme hardship to his mother and an approved Form I-130.

The AAO finds that the immigration violations of the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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.