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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: JUL 08 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) and (i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h) and (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 "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated September 30, 2006.

On appeal, counsel contends that the applicant's convictions are not crimes involving moral turpitude and that the only ground of inadmissibility to overcome is the applicant's false claim to U.S. citizenship made in 1996. According to counsel, the district director failed to consider all of the evidence in their totality and the evidence clearly demonstrates extreme hardship to a qualifying relative if the applicant's waiver application were denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. ■■■■■, indicating they were married on July 14, 1998; a letter and an affidavit from ■■■■■ copies of medical records for ■■■■■ and the couple's daughter, ■■■■■ a copy of ■■■■■'s school records; conviction documents; printouts of tax records; letters from the applicant's and ■■■■■'s employers; a July 12, 1996 Order from an Immigration Judge ordering the applicant be deported; and a copy of an approved Petition for Alien Fiance (Form I-129F). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

In the instant case, the record shows that on August 5, 1994, the applicant was charged with and subsequently convicted of vandalism in violation of California Penal Code § 594(a). He was sentenced to 90 days imprisonment and two years probation. In addition, the record shows that on January 22, 1996, the applicant was charged with and subsequently convicted of battery against former spouse/fiance in violation of California Penal Code § 243(e)(1). He was sentenced to thirty days imprisonment and three years probation. Moreover, the record indicates that on February 7, 1996, the applicant applied for admission to the United States at the San Ysidro, California, Port of Entry, giving a name other than his real name and falsely claiming to be a U.S. citizen who had left his identification at home in El Monte, California. *Record of Deportable Alien (Form I-213)*, dated February 7, 1996; *CMC Southern California Incident Report*, dated February 7, 1996. After being sent to secondary inspection, the applicant willfully admitted he was not a U.S. citizen as he had claimed. *Record of Deportable Alien (Form I-213)*, *supra*. He was placed in exclusion proceedings and taken into INS custody to await an exclusion hearing. *Id.* He married a U.S. citizen on July 14, 1998.

With respect to counsel's contention that neither of the applicant's convictions are crimes involving moral turpitude, whether or not the applicant is inadmissible for having committed a crime involving moral turpitude is irrelevant because, as counsel concedes, the applicant is nonetheless inadmissible for making a false claim to U.S. citizenship in February 1996. *Record of Deportable Alien (Form I-213)*, *supra*; *CMC Southern California Incident Report*, *supra*; *Brief in Support of Appeal from Denial of Waiver* at 5. The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) 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. Therefore, because the applicant made a false claim to U.S. citizenship before September 30, 1996, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 182(a)(6)(C)(i), for attempting to enter the United States by fraud or willful misrepresentation.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship to a qualifying relative 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant’s wife, [REDACTED], states that she was born in the United States and has lived here her entire life. She states she is not fluent in Spanish and, therefore, does not think she could get a job in Mexico. [REDACTED] claims her husband is the primary economic provider of their family and that she is currently unemployed because she has “various medical problems,” including vertigo and endometriosis. In addition, [REDACTED] states that the couple’s daughter, [REDACTED], has Attention Deficit Disorder and receives services at school for her condition. [REDACTED] states that being separated from the applicant would be extremely painful for her and [REDACTED]. She states her family is very close and that the applicant “is the glue that binds [them] together.” She contends that it would cost a lot of money to visit her husband in Mexico and that the “combined emotional and financial stress would cause [her] extreme hardship.” *Affidavit of [REDACTED]* dated January 2, 2007; *see also Letter from [REDACTED]*, dated December 17, 2003.

Medical documentation in the record indicates that [REDACTED] has chronic pelvic pain due to endometriosis *AC & USC Medical Center, Ultrasound*, dated October 15, 2004. In addition, a letter from [REDACTED] physician indicates that [REDACTED] complains of “vertigo all the time,” as well as headaches and nausea. *Letter from [REDACTED]*, dated November 22, 2006. The doctor diagnosed [REDACTED] with vertigo, chronic tonsillitis, acute pharyngitis, and acute tonsillitis. *Id.* Ms. [REDACTED] was also diagnosed with upper respiratory allergy, sleep apnea, and deviated nasal septum. *Letter from [REDACTED]* dated December 11, 2006.

The record also contains a letter from a Child Therapist which states that [REDACTED] has “Attention Deficit-Hyperactivity Disorder, Inattentive Type and Adjustment Disorder NOS.” *Letter from [REDACTED]* dated November 29, 2006. The Child Therapist states that [REDACTED] receives “individual or family therapy weekly [and] psychiatric services and medication support.” *Id.* A copy of [REDACTED] Individualized Education Plan shows that [REDACTED] is eligible for special education services for speech and language impairment. *West San Gabriel Valley Selpa, Individualized Education Program*, dated

December 14, 2006. [REDACTED] receives English language development, reading intervention, and speech therapy daily. *Id.*; *Letter from [REDACTED]* dated November 29, 2006.

Considering all of the factors in the aggregate, the AAO finds that the physical, personal, emotional, and financial hardship that would result from the denial of a waiver of inadmissibility constitute extreme hardship. The record shows that if the applicant were removed from the United States, Ms. [REDACTED] would be unable to afford paying her household expenses. According to the most recent tax documents in the record, in 2002, the applicant was the sole source of income, earning a total of \$18,361 from two different jobs. *Printout of W-2 Forms for [REDACTED]* (indicating the applicant earned \$13,439 from Amco Group Corporation and \$4,922 from [REDACTED] the owner of [REDACTED]; *Letter from [REDACTED]*, dated October 13, 2003. [REDACTED] is currently unable to work due to a variety of medical issues and relies entirely on the applicant for financial support. *Affidavits of [REDACTED]*, *supra*.

The AAO also finds that it would constitute extreme hardship for [REDACTED] to go to Mexico to avoid the hardship of separation from her husband. [REDACTED] was born and raised in the United States and does not speak Spanish fluently. Furthermore, the record shows [REDACTED] has numerous health issues for which she is seeking medical treatment. If she moved to Mexico, she would sever the relationship she has built over the years with her doctors. Furthermore, she would lose the special education services her daughter receives for her attention deficit disorder. Given the plethora of medical issues [REDACTED] and her daughter have, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Ms. [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's two convictions for vandalism and battery, as well as the applicant's false claim to U.S. citizenship in February 1996. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife and U.S. citizen daughter; the extreme hardship to the applicant's wife if he were refused admission; the applicant's history of working and paying taxes in the United States; and the applicant's lack of any additional criminal convictions for over thirteen years.

The AAO finds that, although the applicant's immigration violation and criminal history are serious and cannot be condoned, when 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.