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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Atlanta, Georgia

Date: MAR 03 2009

IN RE:

[REDACTED]

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:

[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.

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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The applicant, [REDACTED], 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 claiming United States citizenship so as to procure admission to the United States.

The applicant is the spouse of a citizen of the United States. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may reside in the United States with her U.S. citizen husband, who she married in 2005.

The district director stated that on September 8, 1996, the applicant gained admission into the United States from Mexico by claiming to be a United States citizen. The district director determined that the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, and found that she failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 16, 2007.

On appeal, counsel states that U.S. Citizenship and Immigration Services (CIS) failed to properly analyze the applicant's hardship claims and supporting documentation, which show extreme hardship to her husband. Counsel states that all of the applicant's husband's immediate family members reside in the United States and are U.S. citizens, and that the applicant's husband has no ties to Mexico, other than the applicant. Counsel indicates that the applicant's husband, who is 42 years old, lived his entire life in the United States, has two children, and is a principal at [REDACTED]. He states that the applicant's husband was diagnosed with depression on account of his wife's immigration situation. Counsel indicates that Mexico has economic, social, and human rights problems and the applicant's husband would experience financial, psychological, and health problems there. He states that because the applicant's husband does not speak Spanish his ability to obtain employment would be severely hampered, and his quality of life would decline in light of Mexico's per capita gross national income in 2004, which was \$6,770, as opposed to \$41,400 in the United States. Counsel indicates that the applicant's husband has financial obligations due to a divorce settlement that he will not be able to fulfill if he joins his wife in Mexico. Counsel indicates that the applicant's husband has hypothyroidism, which is treated with medication and he states that the applicant has bipolar disorder for which she receives treatment. Counsel states that on September 8, 1996, the applicant entered the United States by claiming U.S. citizenship. He states that she admitted to attempting to obtain a sheriff's card at the Sheriff Office in Las Vegas, Nevada, in 1999 by presenting a fake green card, but abandoned the attempt when the officer walked away with the card. Counsel indicates that the applicant had three arrests and one retail theft conviction in 1998. Counsel states that the applicant graduated from Columbia University with honors, that she volunteers, and has overcome a troubled past.

The AAO will first consider the inadmissibility finding under section 212(a)(6)(C)(ii) of the Act.

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 chapter 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 chapter . . . is inadmissible.

....

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 . . .

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. Here, because the record reflects that the applicant's false claim to U.S. citizenship was made prior to September 30, 1996, she is eligible to apply for a Form I-601 waiver.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse.

Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors, which relate to the applicant’s qualifying relative, 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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The entire range of factors concerning hardship must be considered in their totality, and then the trier of fact must “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“the most important single hardship factor may be the separation of the alien from family living in the United States”).

The record contains, in part, an employment letter, a declaration by the applicant’s husband, a psychological evaluation of the applicant’s husband, a declaration by the applicant, financial records, divorce records, a country report on human rights practices in Mexico, a consular information sheet on Mexico, a health insurance document, a divorce settlement agreement, a physician’s letter indicating the applicant’s husband has hypothyroidism, a letter by a business colleague of the applicant’s husband, lists of the applicant and her husband’s family members, photographs, a letter by [REDACTED] a letter by [REDACTED] a psychologist, and declarations by the applicant’s family members.

In his declaration dated November 9, 2006, the applicant’s husband states that he has a close relationship with the applicant, and with his children, parents, and sister and her family members. He indicates that he typically sees his parents “once every week or so.” The applicant’s husband indicates that he underwent counseling after separation from his first wife because none of his friends or family members divorced and he felt like a failure. He states that he has a stressful job, managing a business unit that advises over \$3 billion of investment capital, and has had problems focusing and concentrating because of his wife’s immigration problems. He indicates that he has

alimony and child support obligations and finding a career to provide for those obligations would be extremely difficult in Mexico. He states that he spends every other weekend with his children, plus one extra day every other week. He states that the applicant is an integral part of his children's lives, and that he cannot imagine the impact on them if she was not there. He states that the applicant has matured in the last several years, graduating from college and contributing to the community.

The settlement agreement reflects that the applicant's husband has secondary physical custody with liberal visitation with his children, who were born on April 13, 1995 and February 4, 1997, and is required to provide health insurance, child support, tuition payments, and alimony. The settlement agreement conveys that the applicant's husband's former spouse is a homemaker and has no earned income.

in her psychological evaluation dated October 28, 2006, diagnoses the applicant's husband with Major Depressive Disorder as a result of his fear of being separated from his wife. She states that the applicant's husband reports frequent crying spells, hopelessness, suicidal ideation, low energy, difficulty concentrating on his work because of preoccupation about what will happen to his wife, irritability, consuming more alcohol, and chest pains, because of stress, for which he takes a beta-blocker. states that if "his wife were forced to return to Mexico, it is likely that he would be at risk for severe and permanent depression." diagnosed the applicant with Bipolar Disorder Manic Episode and indicated that the applicant has seen a psychiatrist for medication and a psychologist for psychotherapy.

The applicant, in her declaration dated November 15, 2006, states, in part, that she has a close relationship with her husband and that he would suffer emotionally if they were separated. She states that she ensures her husband has healthy meals, assists her step-children with their school work, and prepares meals for the family. She indicates that her husband would not be able to meet his financial obligations towards his children if he lived in Mexico.

In his letter dated November 6, 2006, states that the applicant had been previously diagnosed with a "schizophrenic episode"; he believes she has Bipolar Disorder, type I. He indicates that the applicant was "in the midst of a manic episode with delusional thinking when traveling through Chicago," and was hospitalized there, and stabilized on medication. He indicates that he has been treating her for more than five months and that she takes prescribed medication and has remained symptom-free. He states that she had two suicide attempts following relationship break-ups.

letter dated November 8, 2006, states that the applicant was seen for an Initial Intake Assessment June 9, 2006, with the problem of a Bipolar Episode (with delusions of grandeur and hallucinations) three months before in Chicago, which lead to inpatient hospitalization in Chicago for seven days. He diagnoses her with Axis I: Bipolar I Episode, Mixed, Severe with Psychotic Features, Obsessive-Compulsive Disorder; Axis IV: Occupational problems; Axis V: Initial = 30, Recent =70. He states that her prognosis is guarded without treatment. He indicates that "deportation would have a negative effect on her medication management, psychotherapy, and rehabilitation."

In rendering this decision, the AAO has considered all of the evidence in the record.

Extreme hardship to the applicant's spouse must be established in the event that he joins the applicant to live in Mexico, and alternatively, if he remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The AAO finds that the applicant's husband's inability to speak, read, and write in the Spanish language would greatly impact his ability to obtain employment in Mexico, a county where the per capita gross national income in 2004 was \$6,770, and that this limitation would prevent him from supporting his children and former spouse, whose entire livelihood is dependent upon him. In light of this, the AAO finds that the applicant's husband, who has a close relationship with his children, would experience extreme emotional hardship if he were to join his wife to live in Mexico.

U.S. court and administrative decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation.

The applicant's husband has a close relationship with his wife, whom he considers an integral part of his and his children's lives. He is concerned about the impact on him of separation from his wife and he stated that he underwent counseling following separation from his first wife. [REDACTED] diagnosed the applicant's husband with major depressive disorder and indicates that he is at risk for severe and permanent depression if separated from the applicant. Given that the applicant has a bipolar disorder for which she sees a psychiatrist for medication and a psychologist for psychotherapy, and in light of her two prior suicide attempts following relationship break-ups, her hospitalization, and her psychologist's statement that removal from the United States would have a negative effect on the applicant's medication management, psychotherapy, and rehabilitation, the AAO finds that the applicant's husband would experience extreme emotional hardship that is unusual or beyond that which would normally be expected upon removal if he were to remain in the United States and separated from his spouse, who has a serious psychological disorder.

The hardship factors raised, both individually and in the aggregate, do in this case constitute extreme hardship to the applicant's spouse if he were to join the applicant in Mexico, and alternatively, if he were to remain in the United States without her. Thus, extreme hardship to a qualifying family member for purposes of relief under 212(i) the Act, 8 U.S.C. § 1182(i), has been established.

The grant or denial of the above 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 to the applicant's spouse, the passage of 12 years since the applicant's immigration violation, her graduation from Columbia University, letters attesting to her good character, and her community volunteerism as demonstrated in the letter by the Latin American Association. The unfavorable factors in this matter are the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. Further, the AAO notes that the applicant has a criminal record in this country. The record reflects that in 1998 the applicant was convicted of retail theft and was sentenced to one year of court-supervised parole, community service, and to stay away from the retail store.<sup>1</sup> The applicant admitted to attempting to obtain a sheriff's card at the Sheriff Office in Las Vegas, Nevada, in 1999 by presenting a fake green card, and she was arrested for battery (domestic violence) in 1997, and prostitution in 2001.

While the applicant has a criminal history in the United States and made a willful misrepresentation in order to obtain admission to this country, the AAO notes that over 12 years have elapsed since the applicant's immigration violation and her single conviction occurred 10 years ago. The AAO finds that the hardship imposed on the applicant's husband as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained and the waiver application is approved.

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<sup>1</sup> The AAO notes that this conviction may render her inadmissible under section 212(a)(2)(A) of the Act for committing a crime involving moral turpitude. However, as the waiver under section 212(i) of the Act, which has the same standard as a waiver under section 212(h) of the Act, has been granted, there is no need to analyze her inadmissibility under the other ground.