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FILE:

[REDACTED]

Office: LOS ANGELES (SANTA ANA)

Date:

**MAR 05 2009**

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 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, 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, Los Angeles, California, and an appeal to the Administrative Appeals Office (AAO) was dismissed. The matter is now before the AAO on Motion to Reconsider. The motion will be granted and the waiver application approved.

The applicant is a native and citizen of Mexico who was 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 previously sought to procure admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. 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 spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated April 2, 2004. The AAO also concluded that the applicant failed to establish extreme hardship and dismissed an appeal of the district director's decision. *See Decision of the AAO* dated April 7, 2005.

On appeal, counsel for the applicant asserts that the evidence submitted in support of the waiver application and additional evidence submitted with the motion to reconsider demonstrates extreme hardship to the applicant's husband. Counsel claims that the applicant's husband's would suffer extreme emotional and financial hardship if the applicant is removed from the United States due to factors including the length of time he has resided in the United States; economic and political problems in Mexico; the expense of supporting two households; difficulties he and the applicant are having trying to conceive a child; the medical condition of the applicant's father-in-law, for whom she provides care while her husband works; and the emotional effects of separation from the applicant. *Brief in Support of Motion to Reconsider* at 2-3. In support of the appeal and motion to reconsider counsel submitted the following documentation: medical records for the applicant, a letter from the applicant's husband, a letter from the applicant's father-in-law's physician, financial documents and information related to the home owned by the applicant and her husband, information on conditions in Mexico, a psychological evaluation of the applicant's husband, and letters in support of the waiver application. The entire record was reviewed and considered in arriving at 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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 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 Ninth Circuit Court of Appeals has held, "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) (remanding to the Board of Immigration Appeals (BIA)) ("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). 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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981),

that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-one year-old native and citizen of Mexico who has resided in the United States since September 1996, when she entered without inspection. The applicant had previously attempted to enter the United States with a fraudulent permanent resident card and was ordered excluded and deported from the United States on September 12, 1996. She is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. The record further reflects that the applicant's husband is a forty-one year-old native of Mexico and citizen of the United States. The applicant married her husband on January 9, 1998 and they currently reside in Fontana, California.

Counsel asserts that the applicant's husband would suffer emotional and financial hardship if the applicant were removed and he remained in the United States. Counsel states that the applicant and her husband have been trying for several years to conceive a child, and being separated from the applicant would prevent them from starting a family. *See Motion to Reconsider* at 2. In support of this assertion, counsel submitted with the motion to reconsider medical records for the applicant, including results from various diagnostic tests related to their infertility problems. These records indicate that since 1998, the applicant has undergone several procedures, including pelvic ultrasounds, exploratory surgery, and an X-Ray Hysterosalpingogram to determine the cause of her infertility. *See letter from [REDACTED] dated May 1, 2005; reports from [REDACTED] [REDACTED], and [REDACTED] from [REDACTED] [REDACTED] dated June 5, 1998.* A psychological evaluation for the applicant's husband conducted on February 12, 2004 states that the applicant's husband "meets diagnostic criteria for depressive disorders and anxiety disorder." *See Psychological Evaluation from [REDACTED] [REDACTED], dated February 14, 2004.* The evaluation further states that the applicant's husband reported that he and the applicant always dreamed of having children and they were both sad they had been unable to have one. *Psychological Evaluation* at 3. He further reported that he would be unable to relocate to Mexico because he would need to earn the money to support the applicant and his father, and stated, "If this happens, our dream of a family would be destroyed; I would be a total failure as a husband and as a man." *Id.* at 4.

The applicant's husband states that he relies on the applicant to care for his elderly father, who suffers from diabetes and dementia. He states,

If I am separated from her, I don't know what I would do because she takes care of my father. . . . I am the only son he has that can take care of him because my mother died three years ago. Consequently if my wife is deported, I would suffer so much for not having her with me, and for not having anyone to take care of my father. Economically I would be affected excessively because I would have to sustain my wife outside of this country, and I would have to pay someone to care for my father. Now with the uncertainty of not knowing what will happen with the two persons that I love the most, I worry and I get so depressed, that I am taking medication for the depression. *Letter from [REDACTED]*

A letter from the family's physician states that the applicant's father-in-law suffers from "poorly controlled diabetes mellitus and senile dementia" and that he needs the applicant, who does not work outside the home, "to take care of him to function at home and maintain his health." *Letter from* [REDACTED], dated February 20, 2004. Another letter from [REDACTED] states that the applicant's husband is having panic attacks and crying spells as a result of stress related to the applicant's immigration status and their difficulty conceiving a child. [REDACTED] states that he is taking anti-depressant medication to control these symptoms. *Letter from* [REDACTED] dated May 1, 2005.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that her husband would experience extreme hardship if she is removed from the United States. Evidence on the record indicates that the applicant's husband is experiencing symptoms of anxiety and depression due to fear that he will be separated from the applicant, they will be unable to have a child together, and he will be unable to provide for her and for his ailing father. The record contains documentation that states he is exhibiting symptoms of depression and anxiety for which he requires medication. It appears that the prospect of being separated from the applicant, in light of the difficulty they have had trying to conceive a child and the role she plays in caring for his father while he is at work, amounts to emotional hardship beyond that which would normally be expected as a result of removal or inadmissibility. Further, documentation on the record indicates that the applicant's husband is employed and she remains at home and cares for his father. If she were removed from the United States, the added financial burden of supporting the applicant in Mexico and paying someone to care for his father would lead to financial hardship, which when combined with the emotional hardship he would experience, rises to the level of extreme hardship.

Evidence on the record also establishes that the applicant's husband would suffer extreme hardship if he relocated to Mexico with the applicant. As noted by counsel, the applicant's husband has resided in the United States since 1985, when he was eighteen years old, and he has no family left in Mexico. Having to readjust to economic and social conditions in Mexico, where unemployment and crime rates are high, would cause him financial and emotional hardship. The applicant's husband is the sole support for his father, who has no other children, and documentation related to poor economic conditions in Mexico supports an assertion that he would have difficulty finding employment and supporting both the applicant in Mexico and his father in the United States. The AAO further notes that the applicant and her husband own a home and he has a retirement account in the United States, and relocating to Mexico and leaving behind their home and other assets would contribute to the hardship he would experience. Further, the applicant's husband would be separated from his father, and, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998).

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(i) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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(i) 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). *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 adverse factor in the present case is the applicant's use of a fraudulent permanent resident card in 1996 when she attempted to enter the United States, her subsequent unlawful entry into the United States and periods of unauthorized presence. The favorable factors in the present case are the extreme hardship to the applicant's husband; the applicant's lack of a criminal record; the applicant's family ties to the United States, including her husband and father-in-law; the applicant's property ties to the United States; and her ties to the community, as evidenced by letters in support of her waiver application from friends and neighbors.

The AAO finds that immigration violations committed by the applicant 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 motion to reconsider will be granted and the appeal will be sustained.

**ORDER:** The motion to reconsider is granted and the waiver application is approved.