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FILE:

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Office: CHICAGO, IL

Date:

MAR 05 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is the spouse of a U.S. citizen and is seeking to adjust her status to that of lawful permanent resident on that basis. The applicant further seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that her spouse would face extreme hardship should the waiver be denied. *Decision of the District Director*, dated October 6, 2005. The Application for Waiver of Grounds of Excludability (Form I-601) was accordingly denied.

On appeal, the applicant, through counsel, maintains that her husband would face extreme hardship if the waiver is denied. *See Motion to Reopen/Reconsider*. Specifically, the applicant indicates that her husband would face severe economic hardship should she be unavailable to care for their children. *Id.* The applicant further indicates that her husband would face emotional hardship due to the family's separation. *Id.* The applicant also claims that the director placed "undue weight" on her 30-year-old misrepresentation. *Id.* In this regard, the applicant indicates that she immediately admitted presenting fraudulent documents when she attempted to enter the United States in 1976, and did not seek to reenter the United States until she could do so legally, with a border crossing card, in 1995. *Id.* The applicant's appeal is accompanied by declarations executed by the applicant and her husband, an employment letter, a 2004 income tax return, photographs, school achievement records, and blood test results relating to the applicant's husband.

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 . . . or any other Federal or State law is inadmissible.

(II) Exception

In the case of an alien making a representation described in subclause (I), if each natural parent of the alien . . . is or was a citizen . . . , the alien permanent resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be 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 [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.

The AAO notes that aliens making false claims to U.S. citizenship before September 30, 1996 are eligible to apply for a Form I-601 waiver. *See Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.¹

¹ The *Memorandum* states, in relevant part,

[i]n considering a case where a false claim to U.S. citizenship has been made, Service [USCIS] 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 [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)], Service [USCIS] 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.

The director found the applicant inadmissible upon concluding that she had presented a fraudulent baptismal certificate to an immigration officer in 1976. The director further found that the applicant had attempted to enter the United States, the same day in 1976, with a fraudulent Border Crossing Card. The applicant maintains that she immediately admitted to the immigration officer that the documents were fraudulent, and withdrew her application for admission. See Applicant's Declaration and Testimony. The record does not support the applicant's claim, and indeed includes a contemporaneous government record indicating that the applicant had purchased the fraudulent documentation 15 days prior to attempting to enter the United States. The inadmissibility finding is therefore affirmed. Because the applicant's false claim to U.S. citizenship was made before 1996, the question remains whether the applicant is eligible for a waiver under section 212(i) of the Act.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's U.S. citizen spouse. Hardship to the applicant's children, or to the applicant herself, is not a relevant consideration.

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. *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. These factors include, with respect to the qualifying relative, 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).

The applicant's spouse, _____ is a 52-year-old native of Mexico and citizen of the United States. He and the applicant were married in 2001, though they have known each other since the 1980s. They have two daughters, born in 1985, and 1991. The applicant also has a daughter who was born in 1977. The applicant's husband states that the applicant's absence would result in extreme financial and emotional hardship. Specifically, the applicant's husband indicates that his wife is responsible for their daughters' and grandchildren's care. The applicant also assists her husband with his business, and in this regard, is responsible for the business' bookings and

accounting. The applicant's husband owns his own music business and, in 2004, earned approximately \$29,000. He maintains that his income would be insufficient to support his family, should he be required to pay for child care or his business' management. The applicant's husband also notes the lower standard of living and lack of educational opportunities for his daughters in Mexico.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver.

The AAO notes the applicant's husband's length of residence in the United States, as well as the length of time he and the applicant have known each other. His relocation to Mexico would involve the loss of his business, loss of longstanding ties to the United States and his need to readjust to a country where he hasn't lived for many years. The record therefore supports a finding of extreme hardship should the family decide to relocate.

The AAO notes that the applicant's family is financially dependent on her husband's income, but that she contributes significantly by managing his business as well as taking care of the home. The AAO notes that the applicant's family of five subsists on about \$29,000 annual income. The financial hardship the family would experience should the applicant be denied the waiver is more than the common consequences of denial of a family member's waiver application. The AAO therefore finds that the applicant has established extreme hardship to her spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The AAO further notes that a grant of the applicant's waiver is warranted in the exercise of discretion. In making this determination, the AAO considers the applicant's 30-year-old misrepresentation and periods of unauthorized presence to be negative factors. The positive factors include her subsequent legal entry into the United States in 1995, extreme hardship to her husband and her family ties. After balancing the positive and negative factors, the AAO concludes that the applicant merits a favorable exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.