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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: MIAMI, FL

Date: MAR 06 2009

IN RE:

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:

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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Cuba 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's mother is a lawful permanent resident. He is seeking 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.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his mother and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 3, dated March 19, 2008.

On appeal, counsel asserts that the applicant never used documents to enter the United States and the district director erred in denying the application because she did not consider the evidence of his mother's illnesses. *Form I-290B*, at 2, received April 8, 2008.

The record includes, but is not limited to, counsel's brief, the applicant's mother's statement and the applicant's mother's medical records. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on August 2, 2000, the applicant attempted to procure admission to the United States with a photo-substituted Spanish passport. Counsel states that the immigration judge never sustained the section 212(a)(6)(C)(i) charge. *Brief in Support of Appeal*, at 1, undated. The AAO notes that the immigration judge found that section 212(a)(6)(C)(i) of the Act applies to the applicant based on his presentation of the fraudulent passport to an immigration officer upon inspection. *Decision on Contested Charges in the Notice to Appear*, at 2, dated August 25, 2008. As a result of this misrepresentation, the AAO finds that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) 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 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. 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. These factors include the presence of lawful permanent resident or United States citizen family ties to 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. The AAO notes that extreme hardship to the qualifying relative, the applicant's mother, must be established whether she resides in Cuba or 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 resides in Cuba. The record reflects that the applicant's mother is 76 years old. *Form I-551*, dated April 18, 2006. Counsel states that all of the applicant's mother's doctors and medication are in the United States. *Brief in Support of Appeal*, at 2. The applicant's mother's doctor states that he has been treating her for anemia normocytic, diabetic(NIDDM), enterocolitis, hematuria, colon diverticulitis, diabetic polyneuropathy, hypertension and atrial fibrillation. *Letter from [REDACTED]*, dated September 17, 2007. The record includes medical records and prescription records for the applicant's mother. Considering the applicant's mother's age, multiple and inter-connected medical problems and that relocation to Cuba would result in the loss of the health care programs that are now addressing her medical conditions in the United States, the AAO finds that she would suffer extreme hardship if she were removed from her current environment. Accordingly, the applicant has demonstrated that his mother would suffer extreme hardship if she resided in Cuba permanently.

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 has been

living with the applicant since he arrived in the United States; the applicant takes care of her emotionally, physically and monetarily; she suffers from many illnesses; she is taking different medications for her illnesses; the applicant reminds her to take her medicine; he pays for her medicine and drives her to the doctors' offices; she would not be able to survive and she lives in depression as the applicant has been fighting for years to get his residency; and the thought of the applicant in Cuba would not allow her to live in peace. *Applicant's Mother's Statement*, at 1-2, undated. As mentioned, the applicant's mother's is being treated for anemia normocytic, diabetic(NIDDM), enterocolitis, hematuria, colon diverticulitis, diabetic polyneuropathy, hypertension and atrial fibrillation. *Letter from [REDACTED]* Based on applicant's mother's medical conditions and age, the AAO finds that the applicant's mother would suffer extreme hardship if she were permanently separated from 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-Morales*, 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 misrepresentation.

The favorable factors include the presence of the lawful permanent resident mother, lack of a criminal record and the extreme hardship to the applicant's mother if his waiver application were denied.

The AAO finds that the misrepresentation committed by the applicant is 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.