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U.S. Citizenship  
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FILE: [REDACTED] Office: NEWARK, NJ

Date: MAY 14 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 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.

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Newark, New Jersey. 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 Turkey 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 having entered the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and step-son in the United States.

The acting district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Acting District Director*, dated January 3, 2007.

On appeal, counsel contends that the applicant's wife has established extreme hardship and that the acting district director abused his discretion in denying the waiver application.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on June 1, 2003; an Individualized Education Program for Ms. [REDACTED]'s son; occupational and physical therapy reports for [REDACTED]'s son; a Psychological Report for [REDACTED]; a copy of the U.S. Department of State's 2005 Country Reports on Human Rights Practices for Turkey and other articles addressing conditions in Turkey; a letter from [REDACTED] physician and copies of her medical records; a letter and two affidavits from [REDACTED]; an affidavit from the applicant; a letter from [REDACTED] employer; financial and tax documents; and a copy of an approved Petition for Alien Relative (Form I-130). 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.

The record shows, and the applicant admits, that he entered the United States using a fraudulent passport in December 1999. *Affidavit of* [REDACTED] dated December 8, 2004. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering 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 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 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> 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

(9<sup>th</sup> 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, [REDACTED] describes her husband as her “soulmate” and states that if he is removed from the United States, “[she] will have a mental breakdown” and be “destroy[ed].” She claims she has back problems and emotional problems. She states that sometimes her back hurts so badly that she cannot even tie her own shoes and that her husband is the person who takes care of her during those times. In addition, she claims she will not be able to pay for all of the household expenses alone if her husband is removed. She claims she cannot go to Turkey with her husband because her entire family is in the United States, she has never been to Turkey, and she does not speak the language there. *Letter from* [REDACTED] dated October 1, 2006; *Affidavits of* [REDACTED] dated November 5, 2003, and December 8, 2004.

A Psychological Report for [REDACTED] in the record indicates that [REDACTED] father was physically and emotionally abusive towards her and was removed from their home by police when she was a young child. According to the Psychologist, as a result of her father being taken away, [REDACTED] dropped out of high school and went to work in order to help support her family, ultimately completing her high school diploma at night. In addition, the Psychologist states that Ms. [REDACTED] was again abandoned by her son’s father after a fourteen year relationship when his alcoholism reappeared. The Psychologist states that [REDACTED] relationship with the applicant is “the first time in her life that she is receiving unconditional love and support from a man.” The Psychologist further states that [REDACTED] has been treated for depression, and concludes that if the applicant is removed from the United States, it “would emotionally destroy her” and “it is likely that she would be unable to recover from this loss.” *Psychological Report by* [REDACTED] undated.

Medical documentation in the record shows that [REDACTED] has had back pain for many years as a result of a job accident over fifteen years ago. Medical notes indicate that [REDACTED] has been under physical therapies, pain medication, and “has received all the interventional pain management” techniques, “but the pain still persists.” The pain is described as “stabbing, like a knife, on both sides of the low back,” radiating up to [REDACTED] neck and down to her shinbones on both sides. *Morris Ambulatory Pain Management Notes*, dated July 24, 2006; *see also Outpatient Initial Evaluation by* [REDACTED], dated August 8, 2006 (stating that the pain is “constant and stabbing in nature,” that it radiates to both of her legs, and that she also reports a sensation of numbness in her legs and feet).

The record also shows that [REDACTED] son from a previous relationship, [REDACTED] who is now fourteen years old, receives special education and special services. According to [REDACTED] most recent Individualized Education Program (“IEP”) in the record, [REDACTED] has learning disabilities in the areas of basic reading and numerical operations. *Frankford Township School, Individualized Education Program 2004/2005*, dated September 2004. The IEP states that “academic basics are a real problem” for [REDACTED] that he “cannot consistently count to 20[,] sometimes show[ing] errors with numbers less than 10,” and that he has difficulty with single-digit addition and subtraction. *Id.*

The record shows that [REDACTED] has received special education services for several years as well as on-going physical therapy, occupational therapy, and speech/language therapy both individually and in groups. See, e.g., *Frankford Township School, Individualized Education Program 2003/2004*, dated September 3, 2003 (stating that [REDACTED] also has speech and auditory processing difficulties and was recently diagnosed with asthma); *Frankford Township School, Individualized Education Program 2001/2002*, dated September 5, 2001 (stating that [REDACTED] continued to need “refinement” with skipping, standing on one foot, catching a ball, and coloring, that his speech remained unintelligible, and that he needed to learn the name and value of coins and to tell time); *Frankford Township School, Annual Review Speech/Language*, dated May 19, 2003; *Frankford Township School, Occupational Therapy End of Year Report 2002-2003*, undated; *Physical Therapy Progress Report*, dated April 2001; *Decision-Making: Placement in Least Restrictive Environment*, undated (for the 2001-2002 and 2003-2004 school years) (stating that [REDACTED] receives special education services in reading, spelling, and English five times per week).

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will experience extreme hardship if his waiver application is denied.

It is evident from the record that the physical, personal, and emotional hardship that would result from the denial of a waiver of inadmissibility constitutes extreme hardship. The record shows that [REDACTED] has significant physical as well as emotional problems. The record shows that she experienced abuse as a child and has a history of depression. The record also shows that she has had serious back pain for many years and has sought several different types of treatment for her back, but that none have provided her relief from her pain. It is evident that [REDACTED] relies on the applicant for physical assistance because of her back pain and that her relationship with the applicant is the first healthy relationship she has ever had with a man. [REDACTED]’s claim that she would have a mental breakdown and be destroyed if the applicant’s waiver application were denied is substantiated by the Psychological Report in the record, which concludes that [REDACTED] would be unable to recover from losing her husband. *Psychological Report by [REDACTED], supra*. Considering [REDACTED]’s history of abuse and depression, combined with her physical problems with back pain, the effect of separation from the applicant on [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 303 (BIA 1996) (finding extreme hardship to the applicant’s wife based on her history of depression and a suicide attempt).

It would also constitute extreme hardship for [REDACTED] to go to Turkey to avoid the hardship of separation from her husband. If she moved to Turkey, [REDACTED] would sever the relationship she has built over the years with her doctors, losing the continuity of health care she has received for many years. In addition, she would be separated from her entire family and has no family ties in Turkey. Furthermore, she would lose the special education services her son receives for his learning disabilities. Given the plethora of psychological and medical issues [REDACTED] and her son 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 [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 alien 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 factor in the present case includes the applicant's entry into the United States using a fraudulent passport. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife and step-son; the extreme hardship to the applicant's wife if he were refused admission, particularly in light of his wife's medical and mental health conditions; the applicant's history of employment and paying taxes in the United States; and the applicant's lack of any criminal convictions.

The AAO finds that, although the applicant's immigration violation is 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.