



U.S. Citizenship
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Services

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FILE:

Office: SAN FRANCISCO, CA

Date: NOV 03 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion will be granted. The previous decisions of the district director and the AAO will be withdrawn and the application approved.

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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant's spouse and child are U.S. citizens and he seeks 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 with his family.¹

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Admissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 26, 2004. The AAO chief dismissed a subsequently filed appeal. *Decision of the AAO Chief*, dated July 17, 2006.

On motion, counsel asserts that the AAO's decision was factually incorrect and failed to evaluate all of the elements of hardship in the aggregate. *Motion to Reopen*, at 3, dated August 9, 2006.

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

The record reflects that, on November 25, 1995, the applicant applied for admission to the United States at the San Ysidro Port of Entry. The applicant presented a counterfeit Application for Nonresident Alien Mexican Border Crossing Card (Form I-190) and a counterfeit Identity Card for Mexican Nationals Residing in the Border Area (FM-13). On December 1, 1995, the applicant was ordered excluded and deported from the United States. The record reflects that the applicant reentered the United States without inspection in January or February 1996. On February 6, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The applicant appeared at the U.S. Citizenship and Immigration Services' (USCIS) San Francisco District Office on September 26, 2001. The applicant admitted that he had attempted to procure admission to the United States by fraud in 1995. As a result, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

¹ The AAO notes that the applicant's Form I-601 indicates that his mother is a lawful permanent resident of the United States. As the the record does not document this status, the AAO will not consider whether she would experience extreme hardship as a result of the applicant's inadmissibility.

- (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 of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child is not considered in section 212(i) waiver proceedings unless it causes hardship to the qualifying relative. 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 pursuant to section 212(i) of the Act. 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.

The AAO will not restate the facts from the previous AAO decision, but will consider them in making this decision.

Counsel states that the applicant's spouse has been hospitalized two times due to her blood disorder and was given a blood transfusion. *Motion to Reopen*, at 5. Counsel states that the applicant's spouse was diagnosed with shortness of breath, asthma, thrombophilia, hypertension, sleep apnea, and anemia (iron deficiency); her medical condition is complicated by obesity; her medical problems require constant medical attention and she has been visiting her doctor very frequently; and when she had medical problems while visiting Mexico, doctors there were unable to correctly diagnose her medical condition. *Id.* The applicant's medical records reflect that she has been diagnosed with

shortness of breath, asthma, thrombophilia, hypertension, sleep apnea, edema and anemia (iron deficiency); and she is taking numerous medications. *Applicant's Spouse's Medical Records*, various dates.

The applicant's spouse states that she routinely goes in for Pt/Ptt blood tests, has her medication adjusted and would be at risk if she did not do this; she has been hospitalized on two occasions due to her disorder and was given a blood transfusion on one of those occasions; she was told that she needed a transfusion of iron due to her worsening anemia and blood disorder; she was told her condition would last for the rest of her life and she should not have a child as either of them could die; she has to make sure she does not eat food high in Vitamin K as it causes blood thickening; she has to make sure any medication she takes coincides with her Coumadin; and although she speaks Spanish very well, she was unable to obtain medical care for her condition while on a visit to Mexico. *Applicant's Spouse's Statement*, dated August 1, 2006. The applicant's spouse's physician states that the applicant's spouse has Lupus anticoagulant, she has to take Coumadin daily, she needs regular blood tests at the clinic, and it is important for her to continue treatment in the United States. *Letter from [REDACTED]* dated August 2, 2006.

Based on the totality of the evidence in the record, which includes the facts discussed in the prior AAO decision, extreme hardship has been established in the event that the applicant's spouse relocates to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel asserts that if the applicant is removed, his spouse will suffer extreme hardship as a single parent with multiple medical problems who continues to be troubled by the death of her infant son. *Motion to Reopen*, at 6-7. The applicant's spouse states that her condition has twice required her hospitalization and that she has been able to depend on the applicant to care for their daughter. *Applicant's Spouse's Statements*, undated and dated August 1, 2006. The applicant's spouse also states that when she has any type of health episode, the applicant takes care of her. *Applicant's Spouse's Statement*, undated. The record reflects that the applicant's son died in 2001 within six months of his birth. The AAO also finds the record to establish that the applicant's spouse suffers from a range of significant health problems, including lupus anticoagulant, for which she receives continuing treatment. It also notes that the record documents that the applicant's spouse has been diagnosed with major depression and is under treatment. Based on the totality of the evidence in the record, which includes the facts discussed in the prior AAO decision, the AAO finds that the applicant's spouse would suffer extreme hardship if the applicant is removed and she remains in the United States.

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 factors in the present case include the applicant's misrepresentation, removal, unauthorized period of stay and entry without inspection.

The favorable factors for the applicant include his U.S. citizen spouse and child, lack of a criminal record (other than a moving violation) and extreme hardship to his spouse.

The AAO finds that the immigration violations committed by the applicant are 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 previous decisions of the district director and the AAO will be withdrawn and the application will be approved.

ORDER: The previous decisions of the district director and the AAO are withdrawn and the application is approved.