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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

SFP 29 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 APPLICANT:

[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 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and has two United States citizen children. She 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 her spouse and their children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 19, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, the accredited representative, for the applicant submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from the applicant's stepfather; published country conditions reports; published reports on asthma; statements from speech and language pathologists; medical statements, records, and prescriptions; statements from teachers; published articles on child rearing; earnings statements, tax statements and W-2 forms for the applicant's spouse; employment letters for the applicant's spouse; a statement from the applicant; statements from the applicant's children; bill statements; school report cards and certificates for the applicant's children; a statement from the applicant's landlord; statements of support from friends and neighbors; certificates for the applicant; rent receipts; and statements from two churches attended by the applicant. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on January 7, 1995 and January 8, 1995 the applicant was detained at a port of entry on the U.S. – Mexico border after attempting to gain admission by using a false Border Crossing Card or lawful permanent resident card. *Form I-485, Application to Register Permanent Residence or Adjust Status*. Based on her presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or her children would experience if her waiver request is denied is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (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 a 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 notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form G-325A, Biographic Information, for the applicant's spouse*. The accredited representative asserts that the applicant's spouse has lived in the United States for more than 28 years. *Accredited representative's brief*, dated November 17, 2006. The parents of the applicant's spouse live in Mexico. *Form G-325A, Biographic Information, for the applicant's spouse*. The applicant and her spouse have two U.S. citizen sons. *Birth certificates for children*. Both of their children suffer from bronchial asthma and have been receiving regular treatment in the United States. *Statements from* [REDACTED], dated July 15, 2005 and October 26, 2006. The applicant's younger child requires re-

evaluation every six weeks. *Statement from [REDACTED]* dated October 26, 2006. The same son also suffers from allergies and needs weekly allergy shots for a period of three years. *Summary Report from [REDACTED]* dated October 27, 2006. He has required emergency treatment because of these conditions. *Emergency Department records, Resurrection Health Care*, dated September 12, 2006. While the record is unclear as to what type of medical care would be available to the applicant's child in Mexico, country conditions reports included in the record document that Mexico City is infamous for its air pollution and that government figures suggest that tens of thousands of people die prematurely because of health problems related to the toxic cocktail of smog that envelops the city for much of the winter period from November to May. "Mexico City's dirty truth," *BBC News*, dated February 11, 2002. Additionally, respiratory ailments related to air pollution were the cause of death for at least half of the more than 2,800 minors who died in the northern border city of Ciudad Juarez. *Mexico: Environmental Issues*, <http://www.eia.doe.gov/emeu/cabs/mexenv.html>, dated January 2004. In addition to the border, air pollution is especially pressing in Mexico's largest cities such as Mexico City, Guadalajara, and Ciudad Juarez. *Id.* The applicant was born in Mexico City and states that Mexico City is the only place in Mexico where she could return. *Form G-325A, Biographic Information sheet, for the applicant; Statement from the applicant*, dated September 12, 2005. While the applicant's children are not qualifying relatives for purposes of this case, the AAO notes that they cannot reside in the United States by themselves. The applicant's spouse states that he and the applicant have no relatives in the United States. *Statement from the applicant's spouse*, dated November 17, 2006. The AAO thus finds that the applicant's spouse would suffer an added hardship if he relocated to Mexico, as he and the applicant would have the responsibility of caring for their asthmatic children in a country where documentation shows that environmental respiratory problems are prevalent and can be fatal. In addition to the documented medical conditions, both of the applicant's children receive speech and language therapy. *Statement from [REDACTED] Speech Language Pathologist*, dated October 21, 2006. One of the applicant's children suffers from a speech impediment for which he has been receiving treatment since 2001. *Statement from [REDACTED] Speech-Language Pathologist, Scammon School*, dated July 7, 2005. His speech-language pathologist notes that the child's speech is still difficult to understand and it would be an injustice to interrupt speech and language services at his school. *Id.* The applicant's children speak but do not read or write in Spanish. *Statement from the applicant*, dated September 12, 2005; *Statement from [REDACTED]* undated. While the AAO again notes that the applicant's children are not qualifying relatives for the purposes of this case, it also recognizes the added hardship of moving children with special needs into an educational system where they can neither read nor write in the language of instruction. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse has lived in the United States for more than 28 years. *Accredited representative's brief*, dated November 17, 2006. The applicant's spouse works the third or night shift at his place of employment. *Statement from the applicant's spouse*, dated November 17, 2006. As he works the third shift, the applicant's spouse is not home in the evenings. *Id.* The applicant's spouse notes that both of his children need a lot of attention that he alone cannot give them due to his work schedule. *Statement from the applicant's*

spouse, dated September 8, 2005. As previously noted, the applicant and her spouse have no relatives in the United States. *Statement from the applicant's spouse*, dated November 17, 2006. The applicant's spouse states that he would have to find a babysitter to care for his children while he is at work all night. *Id.* If he changed his work schedule, he would need to take off each week to take his children to their doctors' appointments and speech therapy. *Id.* The applicant's spouse states that if his sons did not have such tremendous needs, perhaps there would be a possibility of finding help, but that is not the case for his family. *Id.* The AAO notes that the applicant's children attend speech therapy on a weekly basis, each session is \$60.00, and evaluations are \$120.00. *Statement from [REDACTED] Speech Language Pathologist*, dated October 21, 2006. The record also establishes that the asthmatic conditions of the applicant's children require routine treatment. The applicant's older child has been placed on an anti-asthmatic therapeutic program that will be pursued for approximately three years. *Statement from [REDACTED]*, dated July 15, 2005. Documentation in the record shows monthly medical prescription expenses for this child throughout 2003, 2004 and part of 2005. *Confidential Patient Information, Prescription Profile, July 26, 2003 through July 25, 2005; Medical prescriptions.* The record also documents that the applicant's younger son is being treated for his asthma and requires reevaluation every six weeks. *Statement from [REDACTED]*, dated October 26, 2006. The applicant's spouse notes that on January 19, 2006 he was laid off and that he currently makes \$9.50 an hour with some overtime pay for working the third shift at his place of employment and that this is not enough money to cover his expenses. *Statement from the applicant's spouse*, dated November 17, 2006; *Earnings statements for the applicant's spouse.* According to his landlord, the applicant's spouse has at times worked two jobs just to be able to support his family. *Statement from [REDACTED]*, dated July 24, 2005. The applicant's spouse states that if the applicant is not part of his life, a big part of him will slowly die. *Statement from the applicant's spouse*, dated November 17, 2006. He needs her by his side and cannot imagine his life without her. *Id.* When looking at the aforementioned factors, particularly the hardship of being a single parent who must work and, at the same time, care for children with continuing medical problems and special needs, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside 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).

The adverse factors in the present case are the applicant's prior misrepresentation for which she now seeks a waiver, and her extended period of unlawful residence in the United States. The favorable and mitigating factors are the applicant's lawful permanent resident spouse and United States citizen children, the extreme hardship to her spouse if she is excluded from the United States, and the absence of a criminal record. The record also includes documentation to show that the applicant has a positive character and has contributed to her community. *Letters of support from friends; volunteer recognition certificates; and a statement from [REDACTED] Pastor, St. Hedwig Catholic Church*, dated June 7, 2005.

The AAO finds that, although the immigration violations committed by the applicant were 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.