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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[Redacted]

FILE: [Redacted] Office: SANTA ANA

Date: FEB 19 2010

IN RE: Applicant: [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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The applicant is a native and citizen of Mexico. The record indicates that in December 1995, the applicant attempted to procure entry to the United States by presenting a Form I-551, Temporary Evidence of Lawful Admission for Permanent Residence, belonging to another individual. The applicant was thus found to be inadmissible 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 entry into the United States by fraud and/or willful misrepresentation. The applicant 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 lawful permanent resident spouse and U.S. citizen children, born in 2005, 2000 and 1996.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 12, 2007.

In support of the appeal, counsel submits a brief, dated September 11, 2007, a declaration from the applicant's spouse, dated September 10, 2007, and a psychological assessment from [REDACTED], dated August 3, 2007. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 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 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 held in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant’s spouse, a lawful permanent resident, is the only qualifying relative and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant’s spouse.

The applicant’s lawful permanent resident spouse asserts that he will suffer extreme emotional and financial hardship were he to reside in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he states that the thought that his spouse may be removed from the United States is tearing him apart. He further notes that his employment as a horse groomer requires him to travel frequently to follow the equestrian tournaments, oftentimes being away from home 3 to 14 days at a time. He contends that he would suffer hardship were his wife removed from the United States as she is the only one that can care for his three children while he is gone, as they have no relatives able or willing to care for his children. Finally, the applicant’s spouse asserts that his children would suffer extreme emotional hardship were their mother to relocate abroad due to her inadmissibility as they are dependent on their mother, thereby causing him extreme hardship. *Declaration of* [REDACTED], dated September 10, 2007 and *Letter from* [REDACTED] dated July 4, 2006.

In support, a letter has been provided from the applicant's spouse's employer, [REDACTED] confirms that the applicant's spouse has been gainfully employed for over seven

years with [REDACTED]. She further notes that his job requires him to travel two weeks per month, to groom the prized horses for professional horse shows. She concludes that the applicant's spouse needs his wife to help care for their three young children while he continues to work gainfully with the company. *Letter from [REDACTED], [REDACTED]*, dated July 26, 2006. In addition, a psychological assessment has been provided by [REDACTED], who confirms that the applicant's spouse will suffer if his spouse is removed from the United States, as he needs her to help with the care of the children. [REDACTED] further notes that separating the children from their mother would cause them hardship, thereby causing hardship to the applicant's spouse. *Psychological Assessment of [REDACTED]* dated August 3, 2007.

Were the applicant to relocate abroad due to her inadmissibility, the record indicates that the applicant's spouse would be required to assume the role of primary caregiver and breadwinner to three young children without the complete support of the applicant. In addition, due to the young age of the children, the applicant's spouse would need to obtain a childcare provider who could provide the constant monitoring and supervision their children requires while the applicant works, on site and on the road, a costly proposition for the applicant's spouse. Finally, as the applicant's spouse references and [REDACTED] corroborates, separating young children from their mother, who has played a pivotal role in their day to day care, in light of their father's constant travels due to his employment, would cause them emotional hardship and by extension, would cause hardship to the applicant's spouse, the qualifying relative.

Alternatively, the applicant's spouse would be required to find employment with a reduced work schedule, as the applicant would no longer be residing in the United States and assisting in the care of the children. The applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse. The AAO thus concludes that based on the totality of the circumstances, were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse references the problematic economic conditions in Mexico. *Supra* at 1. Counsel further notes that the applicant's spouse earns over \$31,000 per year in the United States, but in Mexico, wages are much less and the applicant's spouse would have difficulty finding a job in the same field for this wage. Furthermore, counsel contends that the applicant's spouse has been physically present in the United States for over 20 years and has rarely traveled to Mexico; he no longer has ties to Mexico and as a result, he would suffer hardship in Mexico. *Brief in Support of Appeal*, dated September 11, 2007. Finally, [REDACTED] outlines the reasons the applicant's spouse has given for not wanting to relocate to Mexico, including the hardships his children would suffer due to substandard academic and health care, the problematic economy, and most notably, the lack of security in Mexico due to high crime. *Supra* at 2-4.

In support, the AAO notes that the U.S. Department of State has issued a travel alert for Mexico. As noted by the U.S. Department of State:

Although the greatest increase in violence has occurred on the Mexican side of the U.S. border, U.S. citizens traveling throughout Mexico should exercise caution in unfamiliar areas and be aware of their surroundings at all times. Bystanders have been injured or killed in violent attacks in cities across the country, demonstrating the heightened risk of violence in public places. In recent years, dozens of U.S. citizens living in Mexico have been kidnapped and most of their cases remain unsolved.

Travel Alert-Mexico, U.S. Department of State, dated August 20, 2009.

The record reflects that the applicant's spouse would be forced to relocate to a country to which he is not familiar. He would have to leave his support network and his long-term gainful employment, and he would be concerned about his and his children's safety, health, academics, and financial well-being at all times while in Mexico. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's lawful permanent resident spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe.

The favorable factors in this matter are the hardships the applicant's lawful permanent resident spouse and U.S. citizen children would face if the applicant were to relocate abroad, regardless of whether they relocate to Mexico or remain in the United States, the applicant's apparent lack of a criminal record, community ties, volunteer work, payment of taxes, and the passage of more than fourteen years since the applicant's attempted entry to the United States by fraud and/or willful misrepresentation. The unfavorable factors in this matter are the applicant's attempted entry to the United States by fraud and/or willful misrepresentation.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The field office director shall continue to process the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) accordingly.