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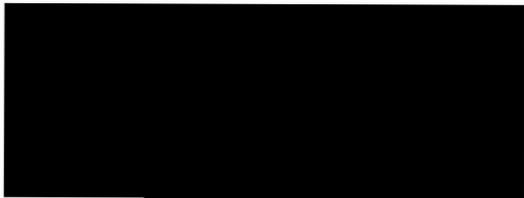
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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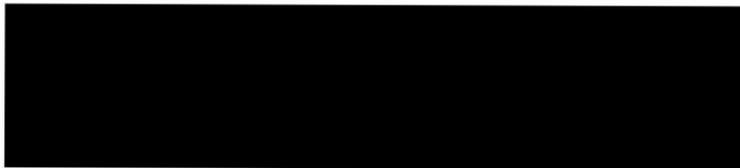
FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2004 765 049 and [REDACTED] relates)

Date: **JAN 12 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:



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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant is a native and citizen of Mexico who, pursuant to the record, attempted entry to the United States in June 2005 with a valid Border Crossing Card (Form DSP-150). He stated that he intended to visit his son for a period of 15 days. Despite the applicant's initial assertions to the port of entry officer that he was coming to the United States for a temporary visit, the record reveals that during secondary inspection, the applicant admitted that he intended to reside and work in the United States. Further investigation revealed that the applicant had been living and working in the United States after having been admitted as a visitor. See *Withdrawal of Application for Admission/Consular Notification*, dated September 20, 2005 and *Form G-325A, Biographic Information*, dated February 1, 2006. The applicant was thus found inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his lawful permanent resident spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 12, 2007.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. 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 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 himself 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 extended family, including children and grandchildren, cannot be considered, except as it may affect the applicant’s spouse.

The applicant’s spouse asserts that she will suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she states that she would suffer extreme emotional hardship due to the long and close relationship she has with her husband; she notes that they have been married for over 39 years and due to his long-term absence, she is feeling sad and depressed. She further notes that her husband is suffering from diabetes and she is worried for his health; she expresses her desire to be with him to look out for him and give him his medications and food. Finally, she references that she has high blood pressure and that is causing her to be tired and depressed; she wants her spouse to care for her. *Letter and Translation from* [REDACTED] [REDACTED] dated January 27, 2007.

A letter has been provided by the applicant’s physician, confirming that he has been suffering from chronic Diabetes Mellitus Type II for 14 years, and receives treatment every month. *See Letter and Translation from* [REDACTED] [REDACTED] dated January 26, 2006. A letter has also been provided by [REDACTED], the applicant’s spouse’s physician, who confirms that the applicant’s spouse is suffering from numerous health issues, including malignant hypertension, diverticulosis, hypertensive cardiomyopathy, coronary heart disease, varicosities and peripheral vascular disease and although stable, [REDACTED] states that there is a high

risk of having very serious medical complications. [REDACTED] concludes that the applicant's spouse's prognosis is guarded; she needs to be medically supervised, and must remain close to a level I hospital that is able to perform invasive cardiac interventions. He further states that being separated from her family will greatly affect her medical conditions, since she needs constant care and moral support; a separation from her family would cause her hardship. *Letter from [REDACTED], dated January 30, 2007.* Finally, an evaluation has been provided by [REDACTED], Clinical and Forensic Psychology, establishing that the applicant's spouse is suffering from schizoaffective disorder, anxiety and depression and requires supportive psychotherapeutic measure and psychopharmacologic medication consultation to alleviate distressing symptoms. [REDACTED] further notes that the applicant's spouse would also benefit from reunification with the applicant as "he appears to provide a positive living environment for the patient..." *Psychological Evaluation by [REDACTED], dated February 27, 2007.*

The record establishes that the applicant and his spouse have been married since 1968. They have raised nine children and 16 grandchildren. Since the applicant's relocation to Mexico in 2005 due to his inadmissibility, the applicant's spouse has been experiencing medical and mental health problems and has moved in with her son to help care for her. The record reflects that the applicant's spouse misses the daily companionship and support of her spouse. Thus, based on a thorough review of the record, the AAO concludes that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship. The applicant's spouse needs the support that the applicant provides on a day to day basis. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's spouse contends that were she to relocate abroad to reside with the applicant, she would lose her permanent residency status. In addition, she notes that she would suffer emotional hardship due to the long and close relationship she has with her family, including her children and grandchildren, all residing in the United States. *Supra* at 1. Finally, the record establishes that the applicant's spouse is suffering from numerous medical and mental health ailments that require ongoing treatment by professionals familiar with her conditions. Based on the applicant's spouse's potential loss of her lawful permanent resident status and the long-term separation from her extended family and professionals familiar with her medical and mental health care needs, the AAO finds that the applicant's spouse would experience extreme hardship were she 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 his 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 she to relocate to Mexico 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 he may by regulations prescribe. 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 . . . 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-Moralez, 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 favorable factors in this matter are the extreme hardship the applicant's lawful permanent resident spouse, children and grandchildren would face if the applicant were to reside in Mexico due to his inadmissibility, community ties, support letters from the family and from the community, gainful employment in the United States, and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation when procuring, and attempting to procure, entry to the United States and unauthorized employment in the United States.

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, 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.