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

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U.S. Citizenship  
and Immigration  
Services

H4



FILE: [REDACTED] Office: MEXICO CITY Date: APR 14 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:



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, Mexico City, 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 resided in the United States from 1992, when she entered without inspection, to June 2005 when she returned to Mexico to apply for an immigrant visa. She was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained admission to the United States or an immigration benefit through fraud or willful misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to return to the United States and reside with her spouse and daughter.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated April 10, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's husband would not experience extreme hardship if the applicant is denied admission to the United States. Specifically, counsel asserts that the applicant's husband would experience extreme hardship if he relocated to Mexico because he would lose his employment and home in the United States and would suffer emotional hardship due to the difficulties his twelve year-old daughter would have adjusting to life in Mexico. *Counsel's Brief in Support of Appeal* at 4-9. Counsel additionally claims that the applicant's husband is suffering extreme hardship in the United States due to separation from the applicant and their daughter who resides in Mexico, the cost of having to support two households, difficulties their older daughter is having because of separation from the applicant, and financial difficulties because of his inability to work sufficient hours to support the family while raising their daughter by himself. *Brief* at 5-9. In support of the appeal, counsel submitted letters from the applicant's husband and daughter, letters from the applicant's daughter's school, a letter from the applicant's husband's employer, a copy of a first time homebuyer agreement related to the purchase of a home by the applicant and her husband, medical records for the applicant's husband, copies of bank statements and bills, and documentation related to the income earned by the applicant when she resided in the United States. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
- (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of

such alien's departure or removal from the United States, is inadmissible.

- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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

- (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:

- (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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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, 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 spouse or parent in 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.

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 Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that “[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.” (Citations omitted.)

The record reflects that the applicant is a forty-two year-old native and citizen of Mexico who resided in the United States from 1992, when she entered without inspection, to June 2005, when she returned to Mexico. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B) of the Act entered into effect, until June 2005. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act for having used a fraudulent social security card to work in the United States. It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation or immigration benefit, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). *Matter of Y-G-*, 20 I&N Dec. 794(BIA 1994). The AAO therefore finds that the applicant’s presentation of a false social security card to an employer in order to work illegally in the United States does not render her inadmissible under section 212(a)(6)(C)(i) of the Act.

The record further reflects that the applicant’s husband, whom she married on February 18, 1995, is a forty year-old native of Mexico and citizen of the United States. The applicant currently resides in Mexico with her youngest daughter while her husband resides in Salt Lake City, Utah with their twelve year-old daughter.

Counsel asserts that the applicant’s husband has experienced emotional hardship due to difficulties their twelve year-old daughter had when she remained in Mexico with the applicant in 2005 and attended school there. *Brief* at 4-5. The applicant’s daughter states that she did not speak or understand enough Spanish to complete her schoolwork and often cried because she was teased by the other students and punished by the teachers there. *Affidavits of [REDACTED] and [REDACTED]* dated May 8, 2006. The applicant’s husband further states,

We were able to register [REDACTED] in school in Mexico but she only attended school for a couple months. The school told me that they could not accommodate her. She did not speak Spanish well enough to communicate with her teachers and peers and she did not understand what the teachers were trying to tell her. She couldn’t read nor write Spanish. . . . The principal suggested to my wife that she was better off

sending back with me to the US because she was too depressed and lost in school. *Affidavit of* [REDACTED]

A letter from her school states that after returning to Utah [REDACTED] needed “some academic intervention to get her caught up to grade level” after residing in Mexico for seven months. *Letter from* [REDACTED] dated January 25, 2006.

Counsel further asserts that the applicant’s husband would suffer financial hardship if he relocates to Mexico due to economic conditions that would make it impossible for him to find employment there comparable to his employment in the United States. *Brief* at 8. Counsel further claims that he would lose the home they purchased in 2003 because he is restricted from selling it without the permission of city officials by the First Time Homebuyer Agreement they entered into. *Brief* at 8-9. Counsel additionally asserts that the applicant's husband would suffer emotional hardship due to separation from his U.S. citizen brother and his parents, for whom his brother has submitted a petition to allow them to obtain permanent residence in the United States. The AAO notes that counsel did not submit documentation concerning conditions in Mexico or evidence that the applicant’s husband had relatives residing in the United States. Documentation on the record does establish, however, that the applicant has been employed since 2000 as a foreman for a glass plant and is a highly valued employee earning \$8.80 per hour (as of October 7, 2004) and working 40 to 65 hours per week. *See letters from* [REDACTED]. A copy of the First Time Homebuyers Agreement further indicates that the applicant and his wife purchased a home in February 2003 and may not sell the home for fifteen years without permission from the city’s loan committee, and would lose most of the equity in the home if they do sell it. *See First Time Homebuyer Agreement* dated February 20, 2003.

The applicant’s husband states that he supports the family by working and does not earn enough to support a household in the United States as well as support the applicant and their daughter in Mexico. He further states that he has had to work fewer hours since their daughter returned from Mexico because the applicant is not there to care for her. *Affidavit of* [REDACTED]. He further states:

I can only work about 8 extra hours a paycheck because I have started to have problems with [REDACTED] at school due to all the family problems that we have and the separation from her mom. . . . I was approached by the teachers that [REDACTED] is now presenting behavioral problems. She is now seen by a counselor at school and she has informed them of her depression due to the separation. *Id.*

The applicant’s husband additionally states that he is having problems at work because he has to take time off to talk to [REDACTED] teachers and attend her therapy sessions with counselors. He states of his daughter: “It hurts me to see her cry at night thinking about her mom and wondering when she is gong [sic] to see her again.” *Id.* Letters from a school social worker and the coordinator of [REDACTED] after school program state that she is being seen by the social worker because she reports being very distressed over being separated from her mother and is having difficulty coping with the situation, leading to behavioral problems that cause her to anger easily. *See Letters from* [REDACTED]

[REDACTED], and [REDACTED]. Another letter states that [REDACTED] is enrolled in an after school program because she was behind in her studies after living in Mexico, but will have to be removed from the program if her behavioral problems continue.

Documentation on the record further indicates that the applicant's husband suffers from chronic migraine headaches that occur about every month and last one to two days with symptoms including nausea, vomiting, and photophobia. *See Progress Notes from [REDACTED] dated September 28, 2004.* The applicant's husband states that when he has a migraine headache he cannot work or drive and must stay in a dark room until it goes away. He states: "Without my wife this has been extremely hard, because I need to work . . . and my child needs me to be there for her at all times." *Affidavit of [REDACTED]*

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that her husband would experience extreme hardship if he relocates to Mexico with the applicant or remains in the United States. The evidence on the record indicates that the applicant's daughter remained in Mexico in 2005 and attended two schools there, and had great difficulty adjusting to life there due to her limited knowledge of Spanish and the lack of resources of the schools there to accommodate her. Further evidence indicates that the applicant and her husband purchased a home in 2003 through a first time homebuyer program and, due to restrictions of that program, may not sell their home without permission and would lose equity in the home if they are permitted to sell it. It appears that the emotional hardship on the applicant's husband that would result if their daughter returned to Mexico with him and had to again attempt to adjust to life there after having so much difficulty before, combined with the financial hardship resulting from losing his job and home in the United States and having to readjust to life in Mexico after many years in the United States, would rise to the level of extreme hardship.

The evidence on the record further indicates that the applicant's husband is currently suffering extreme hardship due to separation from the applicant and the effects of this separation on their twelve year-old daughter. The evidence indicates that the applicant was primarily responsible for caring for their daughter while her husband supported the family financially. Documentation on the record indicates that the applicant's daughter has had difficulty in school because of the effects of separation from her mother, and may be removed from an after-school program because of these difficulties. The applicant's husband further states that he has had to miss work to care for their daughter and attend meetings with teachers and counselors due to her behavior problems, and this is affecting his ability to support the family. He further indicates that he has suffered from chronic migraine headaches since he was young, and due to their debilitating nature, he is suffering physical hardship because he must still care for his daughter and cannot rely on the assistance of the applicant. The emotional effects on the applicant's husband of the depression and behavioral problems their daughter is experiencing, combined with the resulting financial hardship because the applicant's husband has to work fewer hours, rises to the level of extreme hardship. This situation is exacerbated by the applicant's husband's medical condition, which makes it more difficult to care for his daughter by himself. Further, as noted above, separation from close family members is a primary concern in assessing extreme hardship, and the applicant's husband appears to be suffering emotional hardship due to separation from the applicant and his younger child in Mexico. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998).

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factor in this case is the applicant's illegal entry and unlawful presence in the United States as well as her use of a fraudulent social security card to obtain employment in the United States. The positive factors in this case include the applicant's significant family ties in the United States, including her husband and children; hardship to the applicant's family members, in particular her daughter, if she is denied admission to the United States; her lack of a criminal record; and her length of residence, work history, and property ties in the United States. Although the applicant's immigration violation is serious and cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

**ORDER:** The appeal is sustained.