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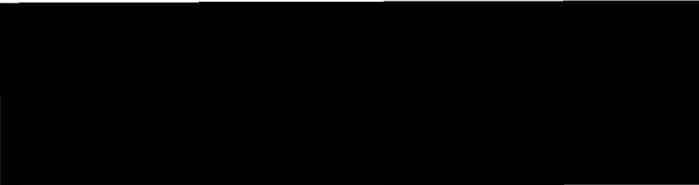
FILE:  Office: CHICAGO

Date: **APR 08 2010**

IN RE: Applicant: 

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 Field Office Director, Chicago, Illinois, 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 record establishes that the applicant, a native and citizen of Mexico, presented a fraudulent U.S. birth certificate when attempting to procure entry to the United States in November 1989. The applicant was thus 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 entry to the United States by fraud and/or willful misrepresentation.¹ 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 four U.S. citizen children, born in 1991, 1993, 1995 and 1996.

The field office 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 Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 21, 2007.

In support of the appeal, counsel submits a brief, dated November 12, 2007, 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....

¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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 lawful permanent resident spouse 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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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).

The applicant must first establish that her lawful permanent resident spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration, the applicant's spouse asserts and documents that he was diagnosed with colon cancer in July 2006 and had to be hospitalized for two weeks. He later had additional surgeries to treat his condition. Due to this diagnosis, the applicant's spouse contends that he needs his spouse to continue taking care of him and their four children. He notes that she drives him to the hospital, ensures that he takes his medications, and plays an integral role in his and his children's daily care and survival. Based on her role, the applicant's spouse contends that were she to relocate abroad, he would suffer emotional and physical hardship. *Affidavit of* [REDACTED] dated February 10, 2007. Moreover, counsel asserts that were the applicant to relocate abroad due to her inadmissibility, the applicant's spouse would be required to become primary caregiver to four young children, while maintaining full-time employment and treating a grave disease, without the support of his spouse. As noted by counsel, the loss of the applicant's income and the costs associated with obtaining childcare coverage for their four children would cause the applicant's spouse financial hardship. *Brief in Support of Appeal*, dated November 12, 2007.

In support, a letter has been provided from the applicant's spouse's treating physician, [REDACTED], confirming the applicant's spouse's diagnosis of colon cancer and attesting to the fact

that the applicant's spouse needs continued follow-up and treatment. *Letter from* [REDACTED], dated November 19, 1997. In addition, numerous medical documents have been provided establishing his continuous treatment for colon cancer. As noted by counsel, "In the last twelve months, [REDACTED] [the applicant's spouse] has seen no less than four different doctors regarding his colon cancer. Evidence has been provided to show that [REDACTED] has been to the hospital for some form of medical treatment ten times over the last year. [REDACTED] said that he has easily been to a doctor more than 25 times over the last year.... [REDACTED] is on a three month follow up program and...will need CT scans and colonoscopy follows up periodically.... [REDACTED] wife [the applicant] is the individual responsible for making sure that [REDACTED] gets to all of his cancer treatment appointments and hospital visits. Due in part to the type of tests that are run for cancer patients and types of treatments they receive, it is ill advised that a patients drive a motor vehicle after receiving treatment. [REDACTED] once again submits an affidavit to reiterate the amount of support that she gives to [REDACTED], due in part mostly because of his cancer....² [T]hese facts do not lend themselves to a person who leads a normal life. [REDACTED] is completely dependant (sic) on his wife...." *Supra* at 4.

Moreover, documentation has been provided from the applicant's spouse's family members, including but not limited to, his mother, his sister and his adult son, confirming that they are unable to care for him due to their own limitations and/or responsibilities to self and others. *See Affidavits of* [REDACTED] *and* [REDACTED]. Furthermore, financial documentation has been provided establishing household expenses of \$2785 but income from the applicant and her spouse of around \$2500; said financial shortfall establishes the need for the applicant to remain in the United States to continue working and assisting with the care of the children, as there are no additional funds to pay for a caregiver for the children were his spouse to reside abroad. *See* [REDACTED] *Family Monthly Budget*. Finally, letters in support have been provided establishing that the applicant is the primary caregiver to the children. *See Affidavit from* [REDACTED] *Baptist Church of Lake County, Illinois*, dated February 9, 2007 and *Letter from* [REDACTED].

Based on the record, the AAO has determined that the applicant's lawful permanent resident spouse would experience extreme hardship if he remained in the United States while the applicant relocated to Mexico. Due to the applicant's inadmissibility, the applicant's lawful permanent resident spouse would have to assume the role of primary caregiver to four young children, while working full-time and continuing to receive treatment for a grave and fluid medical condition, without the complete support of the applicant. The applicant's spouse needs his wife on a day to day basis, to help with the care of their children and to provide emotional and financial support. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

² As noted by the applicant in an affidavit, she reminds her spouse to take his medications, ensures that he gets checked by his doctors, picks up after him since he gets tired easily, cares for him when he is sick, transports him to and from doctors appointments, makes healthy food choices and watches his health, comforts him, advises him, supports him and helps him "get back up on his feet...." *Affidavit of* [REDACTED] dated November 19, 2007.

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 he would not be able to obtain adequate medical services in Mexico to treat his condition. He further notes that he fears for his safety in Mexico.³ In addition, he contends that he would suffer hardship due to losing his connections to his church and his community.⁴ Finally, he asserts that he would suffer as he would not be able to continue treatment with the physicians familiar with his situation, his medications and his treatment. *Supra* at 1.

Based on the documentation provided by counsel with respect to the applicant's spouse's medical condition, the gravity and unpredictability of the condition creating the need for continued follow-up and treatment, the short and long-term ramifications for those afflicted, the need for those suffering from colon cancer to be treated by medical professionals familiar with the disease and its treatment, and the fact that the applicant's spouse would be forced to leave his country, his extended family and his long-term gainful employment⁵ and relocate to a country to which a travel warning has been issued by the U.S. Department of State, the AAO concludes that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico due to his spouse's 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 four 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, gainful employment, property ownership, community support letters, and the passage of more than twenty 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 and periods of unauthorized presence in the United States.

³ The AAO notes that the U.S. Department of State has issued a travel warning for Mexico, due to crime and violence throughout the country. *Travel Warning-Mexico, U.S. Department of State*, dated March 14, 2010.

⁴ The record establishes that the applicant's spouse has been a lawful permanent resident of the United States since June 1989, when he was 43 years old.

⁵ The record indicates that the applicant's spouse has been gainfully employed by [REDACTED] since September 1983. *Letter from [REDACTED]* dated August 17, 2005.

While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant's lawful permanent resident spouse as a result of her inadmissibility, outweigh 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 reopen the denial of the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on motion and continue to process the adjustment application.