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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**

H5

[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **AUG 04 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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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, a native and citizen of Mexico, was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure an immigration benefit, specifically, an immigrant visa, by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident mother.

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 December 13, 2007.

On appeal, counsel for the applicant submits a brief, dated January 11, 2008, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

- (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 states, in pertinent part, the following:

- (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.

With respect to the district director's finding of inadmissibility under section 212(a)(6)(C), the record indicates that the applicant's father, a U.S. citizen, filed a Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (Form I-130), in April 1986, on behalf of the applicant as the unmarried child of a U.S. citizen. The Form I-130 was approved in June 1986. A subsequent investigation by the American Consulate revealed that the applicant was in fact married at the time the Form I-130 was filed and documents provided to establish that the marriage had been annulled were in fact fraudulent. The Form I-130 approval was revoked on February 24,

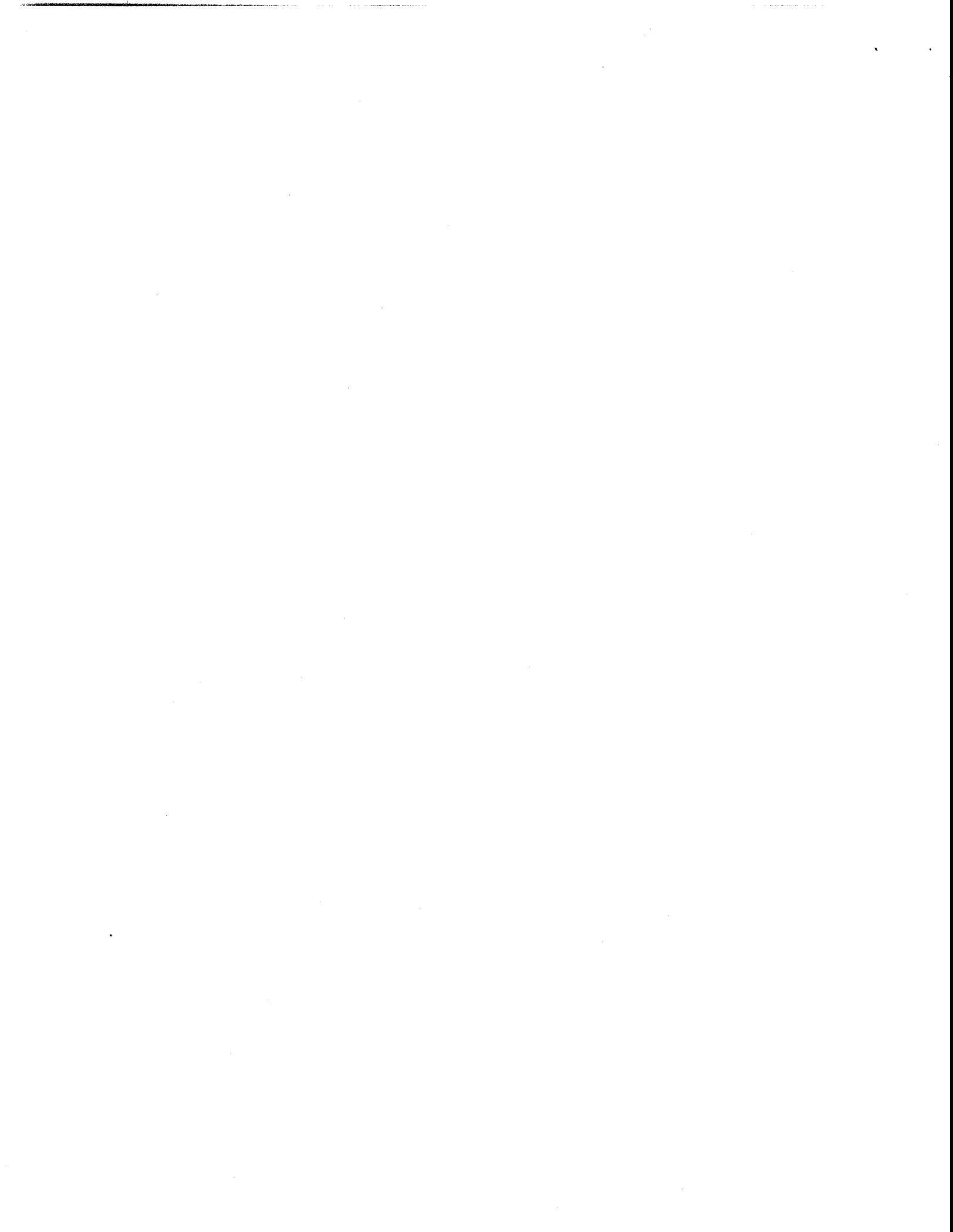


1988 and the Board of Immigration Appeals affirmed that the Form I-130 has been properly revoked and dismissed the appeal. *BIA Decision*, dated January 16, 1992.

On appeal, counsel asserts that the applicant did not misrepresent herself, contending that although she did marry in August 1967, when she went to the Civil Registry to obtain a copy of her marriage certificate, she was told that there was no valid marriage under her name. Counsel further contends that the applicant was given a certificate of marriage crossed with two lines and was told that the act of crossing with two lines an official document indicates that such document is canceled and has no legal value. Therefore, counsel argues that “the petitioner at the time...never lied when he indicated to legacy INS that he was petitioning [redacted] [the applicant] as an unmarried daughter.... Her husband and she never applied for annulment, but without any plausible explanation, her marriage was annulled and her certificate of marriage crossed with two lines....” *Brief in Support of Appeal*, dated January 11, 2008.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The record contains extensive evidence that establishes a thorough investigation by the American Consulate with respect to the applicant’s marital status, as outlined in detail in the BIA’s decision. Numerous documents, including the applicant’s children’s birth certificates detailing their parent’s status as married, and the marriage certificate, confirm that she was married, and moreover, the Form I-130 filed on her behalf by her daughter specifically details that the applicant was divorced in January 2005. Finally, an investigation by the American Consulate revealed that an “X” marked over a marriage certificate does not void the underlying act, despite a letter that had been provided by the applicant stating that a “record...marked with two lines that are across the same from one side to another (X)...considered canceled and without validity for legal procedures....” *Letter and Translation from [redacted]* dated May 11, 1987. As such, despite counsel’s assertion to the contrary, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain an immigration benefit by fraud and/or misrepresentation, specifically, by claiming to be single and furthermore, when questioned, claiming that her marriage had been annulled and submitting a fraudulent certification of annulment. The AAO thus concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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)(a)(6)(C) of the Act provides that a waiver under section 212(a)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's lawful permanent resident mother is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's mother.

The applicant must first establish that her lawful permanent resident mother would suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to her inadmissibility. With respect to this criteria, the applicant's mother contends that she will suffer emotional and physical hardship. In a declaration she states that she is 86 years old and needs constant care and support. She references the fact that she has to use diapers, is unable to walk without the assistance of a walker, is unable to drive, and needs help on a day to day basis. She notes that her other children have their own responsibilities and burdens and are unable to care for her. Finally, the applicant's mother contends that due to her age, she fears that she will not be able to see her daughter before she dies. As the applicant's mother states:

Recently I am staying in a rehab hospital [REDACTED] for an accident occurred two weeks ago. I fell down in the bathroom in the house.... I am very frighten to stay in this hospital because any of my children can't take care of me. I am feeling very tired as if right now I can't almost walk. I don't feel any straight (sic) in my legs and I currently using a wheelchair. I am worry about my daughter [the applicant] because I am scared that I won't get to see her before I die. I feel very anguish and sad, sometimes I can't contain my tears and I cry.... I know that my daughter is alone and that constantly worries me....

Letter and Translation from [REDACTED] *dated January 4, 2008.*

In support, the applicant's eight siblings have provided letters establishing that due to their own familial or work responsibilities and limitations, they are unable to care for their mother. In addition, a letter has been provided by [REDACTED] Business Office, [REDACTED] confirming that the applicant's mother was admitted in January 2008 and has an immediate need for personal care but since the facility is unable to provide residents with one-on-one care, the



applicant's mother needs the applicant to relocate to the United States to provide proper care and support. *Letter from [REDACTED] Business Office, [REDACTED] dated January 8, 2008.*

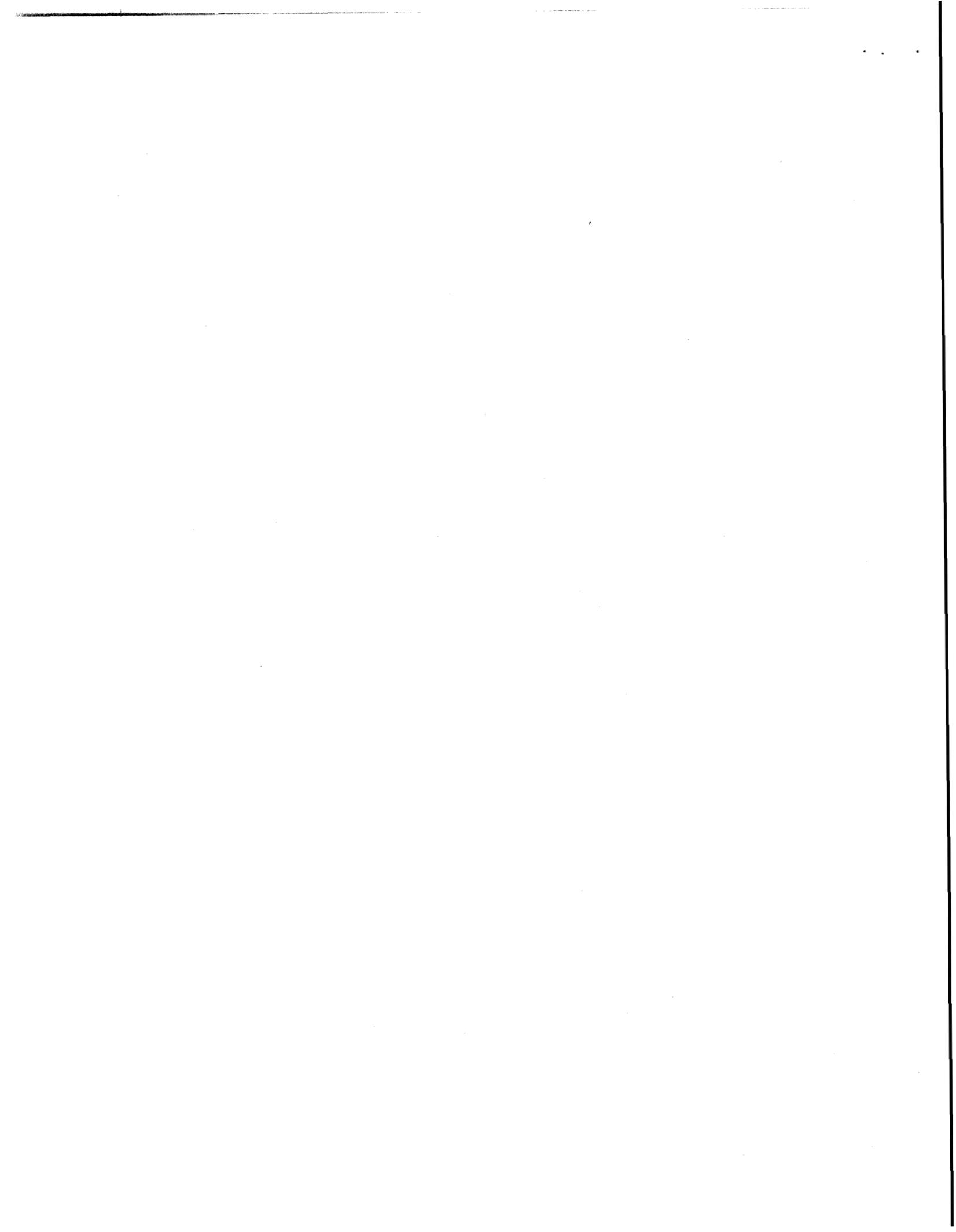
The record establishes the applicant's mother's grave medical condition, her dependence on others, the applicant's siblings' inability to care for their mother due to their own obligations and limitations, and the applicant's mother's emotional need to be with her daughter as a result of her fears that she will die due to age. The record reflects that the cumulative effect of the emotional and physical hardship the applicant's mother would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's mother would suffer extreme hardship.

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 mother asserts that she is unable to relocate to Mexico to reside with the applicant due to her advanced age, the physical limitations she has, and the need to remain in the United States, under the care of professionals familiar with her condition, and close to her eight other children, lawful permanent residents or citizens of the United States. *Supra* at 1-2.

The record reflects that the applicant's mother has been a lawful permanent resident of the United States since June 1982. She has severe physical limitations. She has strong ties to her community, her children and the professionals familiar with her medical conditions. Based on a totality of the circumstances, it has been established that the applicant's mother would suffer extreme hardship were she to relocate abroad to reside with the applicant due to the applicant'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 mother 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 mother would suffer extreme hardship were she 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. 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 "balance 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 mother would face if the applicant were to reside in Mexico, regardless of whether she accompanied the applicant or remained in the United States, the applicant's eight lawful permanent resident or U.S. citizen siblings, the applicant's apparent lack of a criminal record, support letters, and the passage of more than twenty years since attempting to procure an immigration benefit by fraud or willful misrepresentation. The unfavorable factor in this matter is the applicant's attempt to procure an immigration benefit, specifically, an immigrant visa, by fraud or willful misrepresentation.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. 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.

