

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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**

45

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

**AUG 09 2010**  
Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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,

[REDACTED]

Perry Khew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Cuba who was 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and 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 his spouse and their child.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated February 6, 2008.

On appeal, counsel for the applicant contends that the applicant's spouse would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Attorney's brief.*

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, police letters for the applicant; a court record for the applicant; a psychological evaluation for the applicant's spouse; medical prescriptions for the applicant's spouse; publications on medications; a statement from the applicant; a statement from the applicant's spouse; student schedule and tuition costs for the applicant's spouse; property taxes and assessments; a car insurance statement; a property insurance statement; car payments; a statement from the applicant's child's day care facility; W-2 forms for the applicant; and an employment letter for the applicant. 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 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.

The record reflects that on November 16, 2000 the applicant attempted to procure admission into the United States by presenting a passport bearing another person's name at the airport in Atlanta, Georgia. *Record of Sworn Statement*, dated November 16, 2000; *False passport*. Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or child would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Cuba or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in the adjudication of this case.

If the applicant's spouse joins the applicant in Cuba, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Nicaragua. *Naturalization certificate*. She has family in the United States. *Statement from the applicant's spouse*, undated. While the record fails to address how the applicant's spouse would be affected if she resides in Cuba, the AAO notes that the Cuban Assets Control Regulations are enforced by the United States Department of the Treasury and affect all United States citizens and permanent residents wherever they are located, all people and organizations physically located in the United States, and all branches and subsidiaries of organizations of the United States throughout the world. [http://www.travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1097.html](http://www.travel.state.gov/travel/cis_pa_tw/cis/cis_1097.html). The regulations require that persons subject to U.S. jurisdiction be licensed in order to engage in any travel-related transactions pursuant to travel to, from, and within Cuba. *Id.* Transactions related to tourist travel are not licensable. *Id.* This restriction includes tourist travel to Cuba from or through a third country such as Mexico or Canada. *Id.* U.S. law enforcement authorities enforce these regulations at U.S. airports and pre-clearance facilities in third countries. *Id.* Travelers who fail to comply with Department of the

Treasury regulations could face civil penalties and criminal prosecution upon return to the United States. *Id.* According to the Office of Foreign Assets Control, United States Department of Treasury, close relatives may engage in Cuba travel-related transactions without specific authorization from OFAC. <http://www.treas.gov/offices/enforcement/ofac/programs/ascii/cuba.txt>. Persons visiting a "close relative" who is a national of Cuba, and persons traveling with them who share a common dwelling as a family with them, are authorized to engage in Cuba travel-related transactions pursuant to section 515.561(a)(1) of the Regulations. *Id.* There is no limit on the duration or frequency of such travel to Cuba. *Id.* Authorized expenditure limits for travel within Cuba are the same as for all other authorized categories of travel to Cuba (see section IV). *Id.* A "close relative" is any individual related to a person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person. *Id.* While the AAO notes that the applicant's spouse is a close relative and is currently permitted to travel to Cuba, the AAO observes that the United States birth certificate of her child only has her name included as the mother and there is no name listed for the father. *Birth certificate.* The applicant notes that although the child is his, his son does not carry the applicant's name on his birth certificate in an attempt to make the mother of the applicant's spouse more accepting of the child and the relationship between the applicant and his spouse. *Statement from the applicant*, dated December 18, 2007. As there is no proof that the child of the applicant's spouse is a close relative of the applicant's, the AAO finds that this United States citizen child would not be permitted to travel to Cuba. As such, if the applicant's spouse were to reside in Cuba, she would be separated from her United States citizen child. The applicant's spouse is not close with her family in the United States. *Statement from the applicant's spouse*, undated. She notes that she comes from a broken home and does not have family support. *Id.* The applicant's spouse has attended individual psychotherapy sessions 1-2 times a week since December 2007. *Statement from [REDACTED] Psy.D., LMHC*, dated February 29, 2008. She is being assisted to cope with symptoms of depression and anxiety. *Id.* The applicant's spouse was referred to a psychiatrist to assess the benefit of psychotropic medication in alleviating her symptoms and preventing a deterioration of condition. *Id.* As a result, the applicant was prescribed anti-depressant medication. *Medical prescriptions.* While the licensed healthcare professionals do not address how the applicant's spouse would be affected if separated from her child, the AAO acknowledges the documented mental health conditions of the applicant's spouse in anticipation of being separated from the applicant. When looking at the aforementioned factors, particularly the applicant's spouse's lack of cultural and familial ties to Cuba, her documented mental health conditions, and her potential separation from her child due to travel restrictions placed upon Cuba, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Cuba.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Nicaragua. *Naturalization certificate.* The applicant's spouse is not close with her family in the United States. *Statement from the applicant's spouse*, undated. The applicant's spouse depends upon the applicant to accomplish her daily routine. *Id.* He also cares for their son after school, takes him to his doctor's appointments, and plays with him at the park. *Id.* The applicant's spouse says she is unable to do these things with her son due to her lack of energy from which she suffers most of the time. *Id.* The applicant's spouse notes that she comes from a broken home and if she were to be left without the applicant, she would not have anyone as she has been left with no family. *Id.* She further asserts that if the applicant is not granted the waiver application, she will be devastated as he is the only

family she has and will feel as if all of her dreams and aspirations have come to an end. *Id.* The applicant's spouse has attended individual psychotherapy sessions 1-2 times a week since December 2007. *Statement from [REDACTED] Psy.D., LMHC, dated February 29, 2008.* She is being assisted to cope with symptoms of depression and anxiety. *Id.* Her therapist notes that she lacks support from any family and relies only on the applicant for such things. *Id.* Her therapist further states that she would suffer a significant trauma if the applicant is not in the United States, as this would open old wounds from her early childhood of which she is unprepared to handle. *Id.* The applicant's spouse was referred to a psychiatrist to assess the benefit of psychotropic medication in alleviating her symptoms and preventing a deterioration of condition. *Id.* As a result, the applicant was prescribed anti-depressant medication. *Medical prescriptions.* Additionally, the applicant's spouse notes that if the applicant's waiver were not granted, she would be unable to support herself and child. *Statement from the applicant's spouse, undated.* She notes that she is a student and also has a part-time job. *Id.; See student schedule and tuition costs for the applicant's spouse.* The record includes documentation of the various expenses of the applicant's spouse. *See student schedule and tuition costs for the applicant's spouse; property taxes and assessments; a car insurance statement; a property insurance statement; car payments; and a statement from the applicant's child's day care facility.* The AAO acknowledges these documented expenses, as well as the additional cost of caring for a child without family assistance. When looking at the aforementioned factors, particularly the documented emotional difficulties of being separated from the applicant, the documented financial expenses, and the lack of family support in the United States and the effect this would have in caring for her child, the AAO finds the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).*

The adverse factors in the present case are the applicant's misrepresentation for which he now seeks a waiver and his unlawful presence and periods of unlawful employment in the United States. The favorable and mitigating factors are his U.S. citizen spouse and child, the extreme hardship to his spouse if he were to be refused admission, and his supportive relationship with his spouse as documented in the record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See section 291 of the Act, 8 U.S.C. § 1361.* Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.