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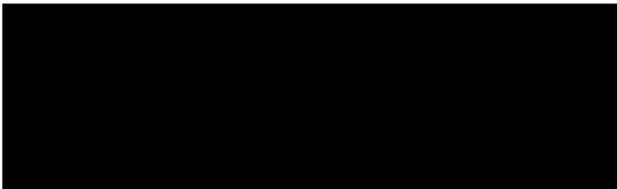
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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#15



FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) DATE: JUL 20 2010  
[REDACTED] relates)

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:  
[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

**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 and the waiver application will be approved.

The record establishes that the applicant, a native and citizen of Mexico, attempted to procure entry to the United States in November 1997 by presenting a valid [REDACTED] and fraudulent employment verification documents, including a counterfeit employment letter, a counterfeit pink Mexican Social Security Form and counterfeit pay receipts. *Form I-213, Record of Removable/Inadmissible Alien*, dated November 28, 1997 and *Record of Sworn Statement In Proceedings*, dated November 28, 1997. It was determined that the applicant was inadmissible 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 into the United States by fraud or willful misrepresentation. 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 U.S. citizen 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 Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 14, 2007.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. In addition, on November 30, 2009, the AAO received a letter in support from [REDACTED] Owner and Manager, [REDACTED] dated October 30, 2009. The entire record was reviewed and considered in rendering this decision.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

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).

Section 212(a)(6)(C) 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 U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, their children, a U.S. citizen born in 1996 and a lawful permanent resident born in 2000, or the applicant's spouse's employer cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that he will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In a declaration he states that he is suffering emotional hardship due to his spouse's long-term absence. He references that every time he visits his spouse in Mexico, he notices that he is losing great moments of his family's life, which in turn makes him very sad. The applicant's spouse further notes that he is rarely able to visit the applicant due to financial constraints and his employment responsibilities. In addition, the applicant's spouse contends that he is suffering emotional hardship as a result of long-term separation from his children, who are currently residing with the applicant in Mexico due to the fact that the applicant's spouse is working long hours by working two jobs to make ends meet and is unable to personally care for his children on a daily basis or alternatively, to pay for full-time child care coverage. Finally, the applicant's spouse asserts that he is supporting two households, one in the United States and one in Mexico, and as a result of such a predicament, he has been late in paying bills and has had to seek a loan from his employer. *Letter from [REDACTED]*

Documentation evidencing the applicant's spouse's numerous debt obligations, and his contributions to the maintenance of the household in Mexico has been provided, to establish the financial hardship he is experiencing due to his spouse's inadmissibility. In addition, evidence establishing that the applicant's spouse is working two jobs to support himself and his family abroad, oftentimes more than 60 hours a week, has been provided. *Letter from [REDACTED]* dated January 1, 2008. Said letter also evidences the number of trips the applicant's spouse has made to Mexico, thereby increasing the financial hardship as he does not earn a salary while he is abroad. *Id.* at 2. Finally, letters in support from family members, friends and colleagues have been provided, attesting to the applicant's spouse's hardships due to his long-term separation from his spouse. Based on the totality of the circumstances, were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme emotional and financial hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse asserts the following:

I have entered some debts here in the U.S. that I am obligated to pay back over time. I've worked in the same place for more than 12 years and I have a good and steady income. I know I can pay my debts over time if I stay in this job. However, if my wife [the applicant] cannot come to the U.S. and I have to move back to Mexico to be with my family, it will be extremely difficult for me to repay these debts.

I have become very good at my job as a truck lining technician. This is a difficult job that requires a lot of skill and experience. The owner of my company has been helping me with many of these immigration issues, and I feel very much in debt to him. It would very much break my heart if after all his help I had to leave him. I feel very guilt and depressed just thinking about that possibility. I am proud of what I do here, and I would feel a big loss if I had to leave my profession. Also, I do not think I would be able to use these skills if I had to look for new work back in Mexico.

*Supra* at 1.

Counsel further contends that the applicant's spouse has several credit card payments each month, making it unfeasible for the applicant's spouse to relocate to Mexico to unite with his family. Finally, counsel notes that the applicant's children are suffering due to substandard academics in Mexico and the lack of English in the curriculum, thereby causing hardship on the applicant's spouse, the only qualifying relative in this case. *Brief in Support of Appeal*.

Evidence of the applicant's spouse's strong ties to the United States has been provided, in the form of numerous letters from his long-term employer, attesting to the applicant's spouse's expertise and proficiency in the workplace, friends and extensive family network. In addition, the AAO notes that the U.S. Department of State has issued a Travel Warning for U.S. citizens and lawful permanent

residents planning travel to Mexico, due to crime and violence throughout the country. *Travel Warning-Mexico, U.S. Department of State*, dated May 6, 2010.

The record reflects that the applicant's U.S. citizen spouse would be forced to relocate to a country to which he is no longer familiar, as he became a lawful permanent resident in 1992. He would have to leave his support network of family, his friends, his community, and his long-term gainful employment, since 1995, thereby causing him career and professional disruption, and he would be concerned about his safety and economic security at all times in Mexico. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen 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. 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 hardships the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or remained in the United States, the applicant's apparent lack of a criminal record, support letters, and the passage of more than twelve years since the applicant's attempted entry to the United States by fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's period of unauthorized presence in 1996, upon expiration of her nonimmigrant stay, and her attempted entry to the United States by fraud or willful misrepresentation resulting in her expedited removal.<sup>1</sup>

The immigration violations committed by the applicant are 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.

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<sup>1</sup> As the applicant has remained outside of the United States since her removal in 1997 she has satisfied the five year bar and does not need to file a Form I-212 Application for Permission to Reapply for Admission.