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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

FILE: [redacted] Office: BALTIMORE, MD Date: JAN 29 2004

IN RE: [redacted]

PETITION: 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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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 was last admitted to the United States on August 15, 1998, as a nonimmigrant visitor. The applicant 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 procured a visa or other documentation from the United States by fraud or willful misrepresentation. The applicant married a U.S. citizen on February 14, 2001 and is the beneficiary of an approved Petition for Alien Relative (EAC-02-165-52025). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and child.

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 Grounds of Excludability (Form I-601) accordingly. *See* Decision of the District Director, dated November 12, 2002.

On appeal, counsel asserts that the factors in the application rise to the level of extreme hardship. Counsel contends that now that the applicant has a child, the child's hardship must also be taken into account in adjudicating the application. *See* Letter of Counsel, dated August 25, 2003.

The record includes a copy of the Montgomery General Hospital Certification of Birth for the applicant's child; a copy of the Montgomery General Hospital Certificate documenting family history and baby's footprints; a copy of the Maryland Birth Registration Notice for the applicant's child; a copy of the U.S. birth certificate for the applicant's child; a photograph of the applicant, his spouse and their daughter; a copy of the Social Security Card issued to the applicant's child; a birth announcement for the applicant's child; copies of two photographs of the applicant's child, one photo including the applicant; an affidavit of the applicant; an affidavit of the applicant's wife; evidence of the pregnancy of the applicant's wife; psychological evaluations for the applicant's wife dated December 18, 2002 and March 26, 2002, respectively; letters of support; a copy and translation of the birth certificate of the applicant; financial and tax documentation for the couple; a copy of the certificate of title for a vehicle owned by the couple; a copy of the marriage license for the couple; a copy of the U.S. birth certificate for the applicant's spouse; a letter verifying the employment of the applicant's spouse and letters from the applicant's spouse dated December 4, 2003 and October 3, 2003. The entire record was considered in rendering this decision.

The record demonstrates that the applicant obtained the nonimmigrant visa he used to enter the United States on August 15, 1998 from the U.S. Consulate through willful misrepresentation. The applicant admitted to an officer of the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] that he had overstayed prior nonimmigrant visas issued to him and then misrepresented his unauthorized stay on subsequent visa applications in an effort to prevent denial.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Therefore, counsel assertions regarding hardship to the applicant's child are only considered to the extent that they reflect hardship to the applicant's wife. 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 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States as the applicant's spouse has lived her entire life in the United States; her entire family resides in the United States; she only speaks English; she has an established career in the United States and she requires the mental health care available to her in this country. *See* Evidence in Support of Appeal, dated January 6, 2003. Counsel further contends that the applicant's wife would suffer hardship by relocating to Mexico thereby denying her child "a decent education." *Id.* Counsel's arguments of extreme hardship to the applicant's wife as a result of departing from the United States are compelling, however it bears noting that counsel's assertion that the applicant's child may die as a result of relocating to Mexico, a nation with a higher infant mortality rate than the United States, is unfounded. Generalized country statistics do not form the basis of a claim of extreme hardship in the absence of evidence particular to the given application. The record does not establish that moving to Mexico poses a particular risk to the life of the applicant's child.

Counsel also asserts extreme hardship to the applicant's wife if she remains in the United States without the applicant. The record establishes that the applicant's wife has suffered with depression for the majority of her adult life. The psychologist preparing the evaluation of the applicant's wife states that she would "suffer extreme hardship and serious damage to her psychological health if she were to be separated from her husband." *See* Psychological Evaluation by Lisa Nava, Ph. D. at 5. The record demonstrates through affidavits from family members that the applicant is solely responsible for his spouse's mental stability. Prior to her relationship with the applicant, the applicant's spouse abused illegal drugs, refused to take

responsibility for her actions and engaged in destructive relationships. *See* Letter from Rose Miranda, dated December 20, 2002.

The applicant's wife underwent over 10 years worth of psychological treatment in an effort to obtain mental stability and well-being. According to all accounts, it was not until she met the applicant that his wife became a productive, stable, happy citizen. *See* Letter from Armando A. Miranda, M.D. The evaluating psychologist, family members of the applicant's wife and the applicant himself all fear that the applicant's wife will suffer extreme mental and emotional harm if the applicant is removed from the United States. "His presence at her side has become essential to her wellbeing [sic]." *Id.* Further, the applicant states, "I worry that my wife may decide one day to end her life, if I am taken away from her." *See* Affidavit of Jose de Jesus "Pecas" Valdivia. The AAO recognizes that any spouse would endure hardship as a result of separation from his/her spouse. However, the situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant's wife is incapable of caring for her child and generally, maintaining her life and livelihood, in the absence of the applicant.

The grant or denial of the above 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 he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's wife, the applicant's acknowledgement of and remorse for his past actions and the passage of more than five years since his last violation. The unfavorable factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in procuring a visa.

It is concluded that the favorable factors outweigh the unfavorable ones. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.