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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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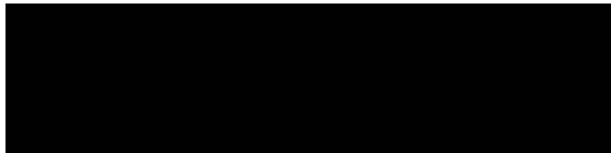

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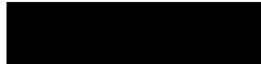
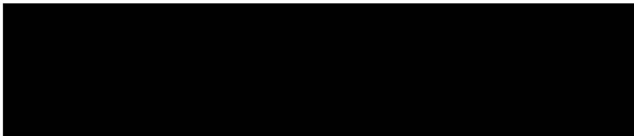
FILE:  Office: PHOENIX, ARIZONA Date: DEC 18 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, 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 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 seeking admission into the United States by fraud or willful misrepresentation. sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated May 3, 2006. Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. 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.

In the denial letter, the director stated that Citizenship and Immigration Service (CIS) records show that on June 18, 1990, presented a Form I-688, Employment Authorization Card, bearing the name of , to a border patrol agent at a checkpoint in El Centro, California, while traveling west on Interstate 8. The director states that at secondary inspection admitted to his true identity, which was not the same person as on the I-688 document. The director conveys that on June 29, 1990, was convicted in the United States District Court, Southern District of California, of false impersonation and illegal entry, in violation of 18 U.S.C. §§ 1546 and 1325.

The record before the AAO contains the complaint in connection with violation of 18 U.S.C. §§ 1546 and 1325. Count 1 of the complaint states that on or about June 18, 1990, Mr. personated another and attempted to evade immigration laws by appearing under an assumed name without disclosing his true identity. Count 2 states that entered the United States at a time and place other than as designated by immigration officers and eluded examination and inspection by immigration officers. The complaint's statement of facts conveys that was found near Ocotillo, California; that he admitted to entering illegally near the port of entry at Calexico, California, on or about June 18, 1990; and that the applicant, upon inquiry as to his immigration status in the United States by an agent, presented a Form I-688 in the name

CIS records reflect that the applicant, , last entered the United States through Calexico, California, illegally. He was encountered in a vehicle at the operational checkpoint on Highway 8 near Ocotillo, California. When questioned by an agent as to his citizenship, presented a Form I-688 card in the name . At

secondary inspection, admitted to his true identity, and stated that he found the Form I-688 card and entered the United States illegally by climbing over the international boundary fence near Calexico, California.

The AAO finds that the evidence in the record indicates that the applicant's misrepresentation of his identity was made in connection with his seeking to enter the United States, rendering him inadmissible under section 212(a)(6)(C)(i) of the Act.

Whether a waiver of inadmissibility should be granted will now be addressed by the AAO. Section 212(i) of the Act provides:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 applicant seeks a waiver of inadmissibility. 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 to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's lawful permanent resident mother. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that are relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id. at* 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

On appeal, counsel asserts that on account of her age and medical needs the applicant's 68-year-old mother, who is a widow, requires the care and attention of the applicant; counsel states that the other adult children of the applicant's mother are unable to provide assistance. Counsel points to affidavits of the applicant's siblings to establish their unavailability to provide care for their mother and he refers to a letter to show the applicant is the caregiver of his mother, to income tax records to show his mother as his dependent, and to a deed to show he owns the house where she lives. Counsel indicates that the applicant's mother would find it difficult to obtain employment in Mexico and would be cut off from its medical or pension programs.

In addition to other documentation, the record contains the following evidence to establish extreme hardship:

- An affidavit by the applicant's sister, [redacted], in which she states that she cannot take care of her mother because she is a single mother with three children. She indicates that the applicant is the one taking care of their mother.
- An affidavit by the applicant's sister, [redacted], stating that her daughter suffers from downs syndrome, vocal cord paralysis, trecheostomy, and pulmonary insufficiency, and requires all of her attention. She indicates that the applicant takes care of their mother.
- A note by [redacted] confirming the condition of [redacted]'s daughter.
- An affidavit by [redacted] conveying that she takes care of her brother, [redacted], who suffered a motorcycle accident in June 2003 and cannot care for himself. She states that the applicant takes care of their mother.
- An undated letter by [redacted] conveying that [redacted] who had a motor vehicle accident in 2003 and subsequently had respiratory failure, a tracheostomy, and a traumatic fourth cranial nerve paralysis, is a patient at the Sunset Community Health Center. He states that his patient has since recovered from his respiratory difficulties and is not using the tracheostomy, but had some swallowing issues recently and was evaluated by a speech therapist and was cleared to use a regular diet with thin liquids. He states that his patient suffers from moderate depression, and insomnia and anxiety and is under the care of EXCEL mental health services for the same.
- A letter by [redacted] stating that the applicant is the care giver of his mother, [redacted], who has been his patient since January 2004. He states that Mrs. [redacted] has high blood pressure, osteoarthritis, osteopenia, and high cholesterol and that she needs continued medical care including visits to doctors and to the laboratory and diagnostic tests.

- Medical records of the applicant's mother.
- A joint tenancy deed conveyed to the applicant and
- Income tax records for 2003 show the applicant's mother as his dependent, and his total income as $16,728 ($10,788 in wages and $5,940 in unemployment compensation); for 2004 income tax records show his mother as his dependent, and his total income as $13,037 ($7,826 in wages and $5,200 in unemployment compensation); and for 2005 the records show his mother as his dependent, and his total income as $9,721 ($6,619 in wages and $3,102 in unemployment compensation).
- An affidavit dated June 2004 by the applicant's mother in which she conveys that she receives monthly social security benefits in the amount of $238, that she has high blood pressure, arthritis, and gall bladder problems, and that the applicant drives her and takes care of her when she is sick. She states that she would not be able to survive without the applicant's support.
- Letters from unions conveying the applicant's membership as a construction laborer.
- Letters commending the applicant's character.
- A medical record reflecting that the applicant's mother received medicare.
- A letter dated June 12, 2004 by , in which attests that the applicant's 70-year-old mother is being treated regularly at his office. He states that she has ascending colangitis (gall bladder disease), vesicular discinecea, and arterial hypertension and renal poliquistosis (renal lesions of the kidneys), and that he considers it necessary for her to be treated in the United States since she has received multiple treatments in Mexico without any satisfactory results and her illness, therefore, has been getting worse.
- U.S. Department of State report on Mexico for 2003 and information by the Library of Congress on Mexico for 2004.

The AAO will now apply the *Cervantes-Gonzalez* factors here in determining whether there is extreme hardship to the applicant's mother. Extreme hardship to the applicant's mother must be established if she were to remain in the United States without the applicant; and alternatively, if she accompanies him to Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

The record shows that the applicant's mother has serious health problems, receives $238 in social security benefits, is enrolled in Medicare, and is a dependent of her son and is living with him. The record shows that the applicant's other siblings are not able to provide care for their mother. In considering the submitted documentation individually and collectively, and in light of *Salcido-*

Salcido and *Cerrillo-Perez*, the AAO finds that the anticipated hardships, as shown by the submitted documentation, rise to the level of extreme hardship to the applicant's mother if she were to remain in the United States without the applicant's assistance.

With regard to the hardship to be experienced by applicant's mother if she were to join her son in Mexico, while political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). The record conveys that the applicant's mother is receiving treatment in the United States for health problems and the letter by [redacted] conveys that she has not had successful treatment of her health problems in Mexico. As shown by the record, the applicant's employment history has been to work either as a construction worker or an agricultural laborer. The Library Congress Country Report conveys that the informal sector of the population in Mexico, the bottom 60 percent of the population, includes construction workers and that these workers face "considerable job instability." In light of this, the AAO finds that the applicant would have difficulty supporting himself and his 70-year-old mother in Mexico. Furthermore, the applicant's mother receives social security benefits and Medicare in the United States, benefits she would not receive in Mexico, as indicated in the Library of Congress Country Report. Consequently, the AAO finds that the submitted documentation, considered collectively, establishes extreme hardship to the applicant's mother, who is of advanced age, if she were to join her son to live in Mexico.

In conclusion, the applicant has established extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's mother, the applicant's steady employment, the letters commending his character, and the passage of 18 years since the applicant's criminal conviction. The unfavorable factors in this matter are the applicant's initial entry through fraud, and subsequent criminal conviction, in 1990 and periods of unauthorized employment and presence in the United States. The AAO notes that the applicant does not appear to have committed any other crimes.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's immigration violations and criminal conviction, the severity of the applicant's acts is at least partially diminished by the fact that 18 years have elapsed since the applicant's conviction. The AAO finds that the hardship imposed on the applicant's mother as a result of his inadmissibility outweighs the unfavorable factors in the application. 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. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.