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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529

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U.S. Citizenship  
and Immigration  
Services

[REDACTED]

*Handwritten initials/signature*

FILE:

[REDACTED]

Office: NEWARK, NEW JERSEY

Date: JUL 29 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[REDACTED]

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.

*Handwritten signature of Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who filed an application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The CAA provides, in part:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for attempting to procure admission into the United States by fraud and willful misrepresentation of a material fact. The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director's Decision* dated July 22, 2003.

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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

The record reflects that the applicant knowingly obtained a photo-substituted passport and on November 15, 1999, at the Miami International Airport, he used that document in an attempt to gain admission into the United States by fraud and willful misrepresentation of a material fact. The record indicates that the applicant presented a Spanish photo-substituted passport to an immigration inspector after disembarking the aircraft. He was escorted to secondary inspection (secondary) for further questioning. During an interview in secondary the applicant admitted under oath that he procured the photo-substituted Spanish passport for a fee of \$1,000 and used it to travel from Madrid to Miami through Frankfurt. Furthermore he stated under oath that he presented the photo-substituted passport to an immigration inspector upon arrival and that he was aware that it is illegal to attempt entry into the United States by presenting a passport that is not valid.

On appeal counsel states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and cites *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). This case refers to two individual who traveled from Madrid to Miami in possession of photo-substituted passports. Upon their arrival in Miami, they immediately surrendered to immigration officials, identified themselves as Cuban citizens, presented their Cuban birth certificates, and requested asylum in the United States. The applicants did not attempt to use the fraudulent documents to procure entry into the United States. In the instant case the applicant presented the photo substituted passport along with a Form I-94 in his assumed name to an immigration inspector in an attempt to enter the United States. Unlike the aliens in *Matter of D-L-& A-M-*, it was not immediately upon arrival, but only after he was referred to secondary for further inspection that he admitted that he was a Cuban national.

In addition, counsel states that the applicant was never given a Notice to Appear (NTA) and that the District Director's decision states that the applicant was issued an NTA in person on November 19, 1999, when in fact the applicant had left Miami and was in New Jersey. The record of proceedings reflects that an NTA (Form I-862) was issued to and signed by the applicant on November 16, 1999, and not on November 19, 1999, as noted in the decision. The AAO finds this typographical error to be harmless. The applicant was issued an NTA in person on November 16, 1999, prior to his departure to New Jersey.

By presenting a photo-substituted passport in an assumed name in an attempt to gain entry into the United States by fraud and willful misrepresentation of a material fact the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed 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.

In an affidavit submitted previously by the applicant's spouse (Ms. [REDACTED] she states that she and the applicant wish to have children and raise them in the United States. She further states that if the applicant is not permitted to reside in the United States her health will be compromised. Ms. [REDACTED] states that she has been prescribed various medications for depression, she does not sleep well and she has been light-headed and weak. Furthermore Ms. [REDACTED] states that she will not be able to leave the United States and relocate to Cuba with the applicant. The record contains no documentation regarding any medical problems Ms. [REDACTED] may be experiencing nor is there any evidence that her medical condition would be jeopardized if the waiver application is denied and the applicant is not permitted to remain in the United States.

There are no laws that require Ms. [REDACTED] to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. See *Shooshtary v. INS*, 39 F. 3d 1049 (9th Cir. 1994).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not allowed to remain in the United States at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.