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U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI DISTRICT OFFICE Date: SEP 2 0 [illegible]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Turks and Caicos Islands who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the daughter of a U.S. citizen and the mother of two U.S. citizen children.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen father. The application was denied accordingly.

On appeal, counsel contends that the applicant has established that the refusal of her admission would cause extreme hardship to her U.S. citizen father. In support of the appeal, counsel submits a brief. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on records of the former Immigration and Naturalization Service (INS) that the applicant was apprehended in 1995 attempting to obtain a U.S. passport through fraud. *Decision of the District Director* (August 13, 2001) at 2. The district director's determination of inadmissibility is not contested by the applicant on appeal. Section 212(i) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. The qualifying relative in this case is the applicant's father.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez,*

the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> 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).

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).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, fails to support a finding that the applicant's father faces extreme hardship if the applicant is refused admission. The record indicates that he has two family members living in the United States other than the applicant. *Letter of Michael A. Bander* (June 11, 1998), at 1. The record is silent as to his family or other ties in the Turks and Caicos Islands, his country of birth. *See* Form I-130, *Petition for Alien Relative on Behalf of Judith Swann* (approved November 21, 1996). The record is also silent as to country conditions in the Turks and Caicos and the financial impact of the applicant's departure. Counsel asserts that the emotional hardship of separation alone rises to the level of extreme in this case, primarily due to the untimely deaths of two of Mr. Swann's other children. Counsel asserts that [redacted] suffers from depression and has experienced "nervous breakdowns." *Petitioner's Brief in Support of Appeal* (October 5, 2001), at 1-2, 4. However, there is no medical evidence in the record to support a finding that the petitioner's reaction to the deaths of his sons or the prospect of removal of his daughter are serious medical conditions and above and beyond the normal, expected reactions to significant personal losses.

USCIS is not insensitive to the circumstances described by the petitioner. However, in limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The record demonstrates that the petitioner will face a hardship no greater than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is refused admission. U.S. court decisions have repeatedly held that the common results of removal, including emotional loss and separation of family members, are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual

or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). In this case, the record fails to show that the hardship to the petitioner rises to the level of "extreme" as contemplated by the statute and case law.

The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative under INA § 212(i), 8 U.S.C. § 1186(i). In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.