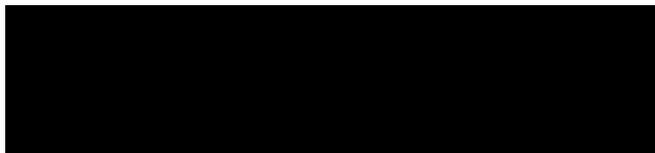


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FILE: [Redacted]

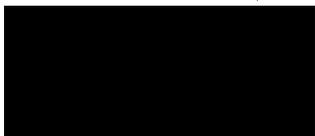
Office: MADRID, SPAIN

Date: SEP 21 2005

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Madrid, Spain. 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 Portugal. The applicant is the son of a U.S. lawful permanent resident (LPR) and the beneficiary of a petition for alien relative. The applicant was found inadmissible to the United States pursuant to §§ 212(a)(6)(C)(i) and (a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(9)(B)(II). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his parents.

The officer in charge found that the applicant had failed to establish extreme hardship to his LPR mother, and the application was denied accordingly. On appeal, counsel contends that the applicant's mother will suffer extreme physical and financial consequences due to the applicant's inadmissibility. On appeal, counsel submits letters from the applicant's mother's physician and priest, as well as tax returns and other documentation. The entire record was reviewed in rendering this decision, and the AAO concurs with the district director's finding that the applicant has failed to establish that his mother will suffer extreme hardship if he is not allowed to enter the United States.

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 officer in charge based the finding of inadmissibility under this section on the applicant's admission that he used a fraudulent U.S. visa in order to enter the United States in 1994.

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 himself is not a permissible consideration under the statute. A § 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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. – The Attorney General [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant was unlawfully present in the United States from October 1994 until February 2002. For inadmissibility purposes, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in February 2002. The applicant now seeks readmission prior to ten years from that date. It must be noted that, while the bar resulting from inadmissibility under § 212(a)(9)(B)(i)(II) prevents the applicant from seeking admission for ten years from his last departure, the bar resulting from the misrepresentation provision of § 212(a)(6)(C)(i) is indefinite. The hardship standard the applicant must meet is the same, however; therefore, the analysis of eligibility under both waivers will be explained in a single discussion below.

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 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 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 in the instant case indicates that the applicant's parents are currently employed and earned an adjusted gross income of approximately \$40,000 in 2003. Although counsel maintains that the applicant's mother would benefit from the applicant's financial assistance were he working in the United States, the record does not establish that the applicant's mother cannot meet her needs in her current financial situation. There is no evidence on the record in support of the claim that the applicant's presence in the United States is necessary to prevent his mother from undergoing extreme financial hardship.

Counsel also submits medical records showing that the applicant's mother underwent an endoscopy and biopsy on January 2, 2003, and that she receives medication for dyspepsia, hypertension, and hypercholesterolemia. The medical evidence does not describe the effect her physical condition has on her overall wellbeing, nor does it include information regarding any assistance or home care that the applicant's mother might require. In sum, the medical documents do not establish that the applicant's mother, who is fifty four years old and suffers from relatively common and treatable conditions, could suffer extreme physical hardship due to the applicant's absence.

There is no documentation on the record to establish that the applicant's mother would suffer extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected difficulties arising whenever a close family member is denied admission to the United States.

U.S. court decisions have repeatedly held that the common results of removal 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his mother as required under INA §§ 212(i) and 212(a)(9)(B), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B). In proceedings for application for waiver of grounds of inadmissibility under §§ 212(i) and 212(a)(9)(B) 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.