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U.S. Citizenship
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FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date: MAR 29 2006

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 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.

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 District Director, Miami, Florida, 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 was paroled into the United States on November 23, 2001 and who applied for adjustment of status pursuant to the Cuban Adjustment Act of 1966 on December 13, 2002. The record also contains a copy of an Italian passport which the applicant stated under oath is a valid document; thus, it appears that she also holds Italian citizenship. On March 18, 2002, the applicant married an Argentine citizen who also submitted an application for adjustment of status on December 13, 2002. The applicant and her spouse were interviewed under oath on July 21, 2004, at which time the couple's testimony revealed that the applicant had entered into a fraudulent marriage in order to convey a benefit under the Act. The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant's mother has been a lawful permanent resident (LPR) of the United States since 2000. The applicant seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i), claiming that her mother will suffer extreme hardship if she is not allowed to remain in the United States. The district director concluded that the applicant had failed to establish extreme hardship to her LPR mother and denied the application accordingly.

On appeal, counsel submits a sworn statement executed by the applicant's mother and copies of medical documentation of her mother's health issues. The AAO has reviewed the entire record and concurs with the district director's determination in this matter.

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 may, in the discretion of the Attorney General, 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For

example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application.

In *Cervantes-Gonzalez, supra*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is her LPR mother. In her statement on appeal, the applicant's mother writes that she would suffer extreme hardship if the applicant were removed, because she suffers from serious ailments and requires the applicant's presence on a constant basis. The AAO notes that the applicant's mother does not mention how she would fare if she relocated to Cuba (or in the alternative, to Italy) to remain with the applicant. Counsel fails to address the possibility of the applicant's mother's return to her native Cuba or a move to Italy; hence, the AAO is unable to conclude that the applicant's mother would suffer extreme hardship in either situation.

The applicant has failed to establish that her LPR mother would suffer extreme hardship if the latter chooses to remain in the United States. The applicant's mother writes that she suffers from back and kidney problems, acid reflux disease, and anemia, among other illnesses. The medical documentation on the record supports her claim of several chronic health conditions, for which she takes medication. The applicant's mother also writes that at times she cannot walk without her daughter's assistance, and that her daughter drives her to doctors' appointments, buys her medication, and assists her in many ways. The applicant's mother states that the applicant supports her financially. She asserts that if her daughter leaves the United States, she will be left alone and unable to care for herself.

The medical documentation on the record does not mention that the applicant's mother is unable to walk, is otherwise incapacitated, or requires assistance to carry out her daily needs. The applicant and her mother point out that she is her mother's only child; however, the record does not indicate that the applicant's mother has no source of assistance or support other than the applicant. The applicant's mother lived in the United States without the applicant until the latter arrived in this country in November 2001, and there is no independent evidence on the record to establish that she could not do so again. The record does not support a conclusion that the applicant's mother would suffer extreme hardship, in view of her medical condition, should the applicant be removed from the United States.

The AAO notes that in *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991), the Ninth Circuit Court of Appeals stated 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. Also, the U.S. Supreme Court 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 her LPR mother would suffer extreme hardship over and above the typical disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) 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.