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

tlz

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

JAN 04 2007

IN RE:

[REDACTED]

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:

[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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States (U.S.) 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 having procured admission into the United States by fraud or willful misrepresentation on or about January 1990. The applicant is the child of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the assertions provided in the affidavit of the applicant's parent and the evidence in the record did not support a finding that the applicant's parent would experience extreme hardship upon the removal of the applicant. The application was denied accordingly. *Decision of the District Director*, dated November 24, 2004.

On appeal, counsel asserts that the equities in this case far outweigh any adverse factors and that the effect that the removal of the applicant will have on the applicant's mother makes this case one where a 212(i) waiver should be available. *Counsel's Appeal's Brief*, dated December 20, 2004.

The record indicates that on or about January 1990 at the Calexico Port of Entry, the applicant presented an I-551 permanent resident card belonging to someone else to gain entry into the United States.

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.

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. Hardship the alien himself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's 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).

Counsel cites *Matter of Marin*, 16 I&N Dec. 581, 584-585 in support of the application. Counsel states that *Matter of Marin* requires the court to balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented on her behalf. The AAO notes, as stated above, that extreme hardship to a qualifying family member must be established before the Secretary can make a determination of whether a favorable exercise of discretion is warranted.

The AAO notes that extreme hardship to the applicant's mother must be established in the event that she resides in Guatemala or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his mother in the event that she resides in Guatemala. In her brief, counsel states that the applicant's mother cannot relocate to Guatemala with the applicant because the applicant would not be able to support her financially in Guatemala. The applicant's mother states that the applicant would not be able to find employment in Guatemala because he is too old. She also states that the applicant would not be able to find work in an auto body shop because people in Guatemala do not repair their cars when they have a scratch or fender-bender. *Mother's Statement*, dated February 23, 2002. The record indicates that the applicant works in an auto body shop as a top caliber collision repair technician specializing in sheet metal and heavy collision repairs. *Letter from Employer*, dated December 7, 2004. The AAO notes that no documentation was submitted regarding country conditions in Guatemala and the applicant's ability to find work in Guatemala as a collision repair technician specializing in heavy collision repairs.

The record does include a letter from the doctor who treated the applicant's mother while she was visiting Guatemala. While visiting Guatemala in June 2004, the applicant's mother became ill and was hospitalized for a week. She was eventually diagnosed with chronic diabetes, regulated by insulin. The doctor who treated her in Guatemala stated that traveling long distances might worsen her condition because of the pressure in the plane and the altitude. He states that this combination of factors could be deadly and that he would reevaluate the mother's condition in two months. *Letter from Dr. [REDACTED]* dated December 14, 2004. The AAO notes that the record is not clear as to whether the applicant's mother recovered from her condition and traveled back to the United States. In addition, no documentation was submitted from a doctor in the United States confirming that the mother's current condition is such that she is not able to travel by plane. Thus, the AAO finds that the current record does not support finding of extreme hardship to the applicant's mother as a result of relocating to Guatemala.

The applicant also has not established extreme hardship to his mother in the event that she remains in the United States. Counsel states that the applicant's mother will suffer economic and emotional hardship as a result of being separated from the applicant. She states that the applicant lives with his mother and his sister. In her affidavit, the applicant's mother states that the applicant takes care of all of her needs. He takes her to doctor's appointments and pays all of the household expenses. She states that her daughter, who lives in the house with her and the applicant, has not been working for four months. The applicant works full-time and although all of the bills are in the applicant's sister's name, the applicant is paying all of the expenses. In her brief, counsel states that the applicant's mother has five other children living in the United States as either lawful permanent residents or U.S. citizens. The applicant's mother states that these children, except for the

daughter living with her, have families of their own and cannot take care of her needs. The AAO notes that the applicant's Form I-601 lists his brother, [REDACTED] living at the same address as the applicant, in addition to his sister and his mother. The AAO notes that no documentation was submitted to support these assertions. No financial documentation or statements from the applicant's siblings were submitted to support the assertions regarding the applicant being the only caretaker for their mother. Furthermore, no documentation was submitted to show the extent of the mother's emotional suffering. The AAO notes that family separation and the emotional suffering surrounding separation are seriously considered in reviewing an application. In the applicant's case, the separation does not have to be permanent as the applicant is free to travel to Guatemala. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 (9th 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 (9th 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.