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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 24 2008**

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 PETITIONER:

[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 Director, California Service Center, 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 found to be inadmissible to the United States 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 sought admission into the United States by fraud or willful misrepresentation. The applicant has applied for adjustment of status pursuant to section 1 of the Cuban Adjustment Act. She is the daughter 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 service center 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 Service Center Director Decision* dated February 27, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) erred in failing to thoroughly analyze the facts and evidence in the case and in finding that the applicant had not established that her father would suffer extreme hardship if she is denied a waiver. Specifically, counsel claims that the applicant qualifies for a waiver under section 212(i) of the Act because her father depends on her for financial support and to attend to his medical needs. Counsel asserts that the applicants’ father suffers from diabetes and the applicant takes him to his doctor’s appointments and ensures he follows the strict diet prescribed by his doctor.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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)(i) 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship.

These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. Moreover, 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.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Cuba who has resided in the United States since November 12, 1999, when she sought admission by presenting her Cuban passport and a fraudulent U.S. visa. The applicant's father is a sixty-three year-old native and citizen of Cuba who has been a Lawful Permanent Resident since 2004. Counsel asserts that the applicant's father would suffer extreme emotional, physical, and economic hardship if the applicant were removed to Cuba. Evidence submitted with the waiver application includes affidavits from the applicant and her father and a letter from the applicant's father's doctor stating that he suffers from acute diabetes mellitus. This letter further states, "Due to his condition, he needs medication, supervision, and special diet." See *undated letter from [REDACTED] M.D.* The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel asserts that the applicant's father depends on the applicant to attend his doctor's appointments and serve as an interpreter and further states, "[REDACTED] would not be able to care for himself and provide himself with proper treatment if it were not for the presence of his daughter." The applicant's father states in his affidavit that he would lose control of his treatment for diabetes because the applicant is the only person who takes care of him. See *affidavit of [REDACTED] dated October 12, 2004*. The AAO notes that aside from this statement and the brief letter from the doctor, the record contains no other information on his condition, such as a detailed letter from the treating physician explaining the nature and long-term prognosis of the condition, the treatment and medication prescribed, and the type of assistance that family members would need to provide. Without more detailed information, the AAO is not in a position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. The record also indicates that the applicant's father has other family members in the United States, and counsel has not submitted any evidence indicating that these family members are not able to care for him. Counsel refers to the applicant's mother as [REDACTED]'s wife, indicating that her parents are married to each other. He further states that they are both elderly and in a delicate condition, but does not provide her age or evidence she suffers from any illness or medical condition. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19

I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also indicates the applicant has a sister who is a Lawful Permanent Resident, but does not contain any explanation of why the applicant's sister is unable or unwilling to provide any support to the applicant's father.

Counsel additionally asserts that the applicant is the main source of income in her household and financial support to both her parents, but does not submit any documentation of the applicant's income or the financial circumstances of her parents. As noted above, the unsupported assertions of counsel do not constitute evidence. The applicant's father also states that the applicant is helping him with his financial problems and that he doesn't "want to decline [his] standard of living." See affidavit of [REDACTED] dated October 12, 2004. It is not clear from the record to what extent the applicant's father depends on the applicant financially, but even if the loss of the applicant's income would have a negative impact on his financial situation, 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.

The applicant's father also states that he will suffer from depression if he is separated from his daughter, but there is no evidence provided concerning his mental health or any emotional hardship he might experience if the applicant were returned to Cuba. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a relative's removal or exclusion. Although the depth of his distress over the prospect of being separated from his daughter is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically 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 and familial and emotional bonds exist.

It appears from the record that any physical, emotional, or financial hardship to the applicant's father would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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). The applicant made no claim that her father would experience hardship if he were to relocate with her to Cuba. Therefore, the AAO cannot make a determination of whether her father would suffer extreme hardship if he moved to Cuba.

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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(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.