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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2008**

IN RE: Applicant: [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:

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 Director, California Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). 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 60-year-old native and citizen of Cuba who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant's mother is a lawful permanent resident of the United States. The applicant presently seeks a waiver of inadmissibility in order to adjust her status to lawful permanent resident and remain in the United States.

The director determined that the applicant was inadmissible, and that she was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to her lawful permanent resident mother. **The waiver application was denied accordingly. On appeal, the applicant, through counsel,** maintains that her use of a photo-switched passport to gain admission to the United States in 2003 does not render her inadmissible. See Applicant's Appeal Brief. Alternatively, she claims that a denial of her waiver application would result in extreme hardship. *Id.*

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 director found the applicant to be inadmissible based on her fraudulent use of a photo-switched passport to gain admission to the United States. The applicant admits that she used a photo-switched passport, but claims that she is not inadmissible because "she did not practice fraud on a U.S. government official." See Applicant's Appeal Brief at 4. In support of her claim, the applicant cites *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994) and *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). The applicant's reliance on these cases is misplaced. The record reflects that the applicant presented herself as a passenger in transit without a visa when she appeared for inspection at Miami International Airport. Thus, *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984) applies, and the applicant must be found to be inadmissible. See also *Yimeri v. Ashcroft*, 387 F.3d 12 (1<sup>st</sup> Cir. 2004) (finding aliens in transit without a visa inadmissible under the amended Act). The AAO therefore affirms the director's determination of inadmissibility. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(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 . . . ."

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 lawful permanent resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to the applicant's son is also not a relevant consideration under the statute.

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 set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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).

The applicant's mother, [REDACTED], was admitted as a lawful permanent resident of the United States in 2002. She is 80 years old. The record reflects that she suffers from Chronic Obstructive Pulmonary Disease and [REDACTED]. She is disabled, and confined to bed or a wheelchair. The applicant states that her mother "fully depends on her for her daily needs." *See* Applicant's Sworn Affidavit. The AAO notes that the applicant has a 35 year-old son, who has been a lawful permanent resident of the United States since 2003. According to information provided by the applicant, her son resides with her and her mother. *See* Form I-601, Application for Waiver of Grounds of Inadmissibility. The AAO further notes that the applicant's brother, also a lawful permanent resident, resides nearby. *Id.*

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant is denied the waiver. The record does not contain any evidence establishing that the applicant's mother could not be adequately cared for by her son (the applicant's brother) or grandson (the applicant's son). The applicant does not explain who took care of her mother before her arrival in the United States in 2003. The record also does not indicate the onset date of the applicant's mother's condition. Further, there is no evidence in the record suggesting that the applicant's mother is financially dependent on the applicant. The financial documentation in the record includes the applicant's 2004 and 2005 income tax returns listing \$322 and

\$3600 in income. The record does not contain any statement by the applicant's mother herself.<sup>1</sup> Although the AAO recognizes that the family's separation would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." See *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In sum, the record at best indicates that the applicant's mother would face the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). 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 her lawful permanent resident mother as required under section 212(i) of the Act, 8 U.S.C. § 1182(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. 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.

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<sup>1</sup> The AAO notes that the record does not indicate whether the applicant's mother would relocate to Cuba if the applicant is removed. Having found that the applicant's mother would not face extreme hardship should she remain in the United States, the AAO need not address whether she would experience extreme hardship should she relocate. Nevertheless, the AAO acknowledges that relocating to Cuba likely would cause extreme hardship to an individual in the applicant's mother's circumstances.