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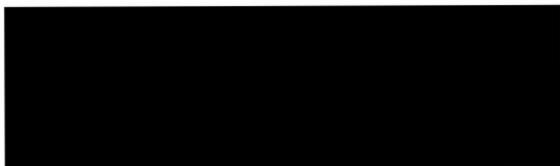
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE: [REDACTED] Office: MIAMI, FL (WEST PALM BEACH) Date: **AUG 08 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 Acting District Director, Miami, Florida (West Palm Beach), denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the 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 50-year-old native and citizen of Chile who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the son of a U.S. citizen, and the beneficiary of an approved relative petition filed on his behalf by his U.S. citizen brother. He presently seeks a waiver of inadmissibility in order to adjust his status to lawful permanent resident and remain in the United States.

The acting district director determined that the applicant was inadmissible and that the denial of a waiver would not result in extreme hardship to his U.S. citizen mother. The waiver application was denied accordingly. On appeal, the applicant, through counsel, maintains that the director failed to adequately consider his hardship claim and the evidence submitted. *See* Form I-290B, Notice of Appeal to the AAO. Specifically, the applicant notes his mother's medical condition and financial circumstances. *See* Appeal Brief.<sup>1</sup>

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 acting district director found the applicant to be inadmissible based on his fraudulent representation on the Form ETA-750 Part B, a form required to obtain a labor certification and an employment-based immigrant visa. The applicant does not dispute the inadmissibility finding. 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 . . . .”

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<sup>1</sup> Applicant's counsel cites to an unpublished AAO decision regarding an applicant whose qualifying relative suffered from Alzheimer's. The AAO notes that each case is evaluated on the basis of the individual circumstances, facts and evidence presented. The AAO is not bound in this case by a decision in another, unrelated matter.

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 lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible 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], is a 72-year-old U.S. citizen who suffers from mild Alzheimer’s, dementia and major depression. See Opinion Letters of [REDACTED] see also Report from Dr.

According to the Social Security Administration records provided, she receives \$137 per month. The applicant maintains that his mother, who resides with him, is financially dependent on him. The applicant, however, fails to explain why his U.S. citizen brother is unable to care for their mother. The AAO notes that the applicant’s brother lives in Wellington, Florida, is a broker, and earns over \$30,000 per year. See Form I-864, Affidavit of Support. The AAO also notes that the applicant has two other brothers who are lawful permanent residents of the United States. The record contains an Affidavit of Support executed by [REDACTED] also of Wellington, Florida, reporting an annual income above \$50,000. The record contains documents relating to country conditions in Chile, but does not otherwise include any evidence regarding the possibility of relocation for the applicant’s mother. Specifically, the applicant does not submit any evidence indicating that the applicant’s mother’s medical conditions cannot be effectively treated in Chile. The record also does not include a statement by the applicant’s mother claiming hardship, or indicating whether she would choose to relocate to Chile or remain in the United States with the applicant’s brothers.

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 AAO notes that a psychologist’s opinion that the applicant’s departure would result in severe hardship is not evidence of extreme hardship. The AAO recognizes that the applicant’s mother is 72 years old, and suffers from Alzheimer’s, dementia and depression. Although her condition may be affected by

separation from the applicant, the record does not support a finding that she would experience extreme hardship. While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a parent is at issue. *See Shoostary 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").

The AAO notes that the applicant's mother has three sons residing nearby. The record also indicates that the applicant's brothers are well-employed, and are able to provide financial support to their mother. The record does not include any evidence to suggest that the applicant's brothers are incapable of providing emotional support to her as well. The record also does not include any evidence regarding other family, property or community ties in the United States. As noted above, the record does not include a statement from the applicant's mother indicating whether she would relocate to Chile or remain in the United States. The AAO notes that, as a U.S. citizen, the applicant's mother is not required to relocate. Should she decide to do so, there is no indication that medical treatment for her condition is unavailable in Chile or that she would otherwise experience extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). In sum, the AAO finds that denial of the waiver would result in the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is found to be inadmissible to 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 (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). 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 U.S. citizen 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.