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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 02 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:

SELF-REPRESENTED

### 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief  
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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her permanent resident husband, permanent resident parents, and U.S. citizen children.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated June 2, 2006.

On appeal, former counsel for the applicant contends that procuring fraudulent documents is not a significant factor for assessing inadmissibility. *Brief from Counsel*, dated July 31, 2006. Counsel asserts that the applicant obtained a fraudulent passport to flee persecution in Cuba in order to save her life. *Id.* at 1-2. Counsel asserts that the danger of persecution should outweigh all but the most extreme factors. *Id.* Counsel contends that the applicant's family members will experience extreme hardship if the applicant is prohibited from remaining in the United States. *Id.* at 2-3. Specifically, counsel suggests that the applicant's husband, children, and parents will experience emotional hardship if they are separated from the applicant. *Id.* Counsel states that the applicant's husband would be left to care for their two children, creating a burden on him. *Id.* at 2.

The record contains a brief from counsel; a copy of the applicant's marriage certificate; a copy of the applicant's permanent resident card; a copy of the applicant's husband's birth certificate; copies of the applicant's children's birth certificates; copies of the applicant's parents' permanent resident cards, and; a statement from the applicant conceding her inadmissibility. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on or about August 9, 2000 the applicant attempted to enter the United States using a fraudulent passport. Specifically, she obtained a fraudulent Spanish passport in Cuba, then traveled to Spain and Portugal. She traveled from Portugal to the United States and presented the fraudulent passport, claiming a false identity. The applicant did not indicate upon her attempted entry that she was fleeing persecution in Cuba. When asked if she had any concerns about returning to Cuba, she stated that she “can’t work in Cuba [and] they won’t let [her] better [herself] as a professional.” *Applicant’s Interview Statement*, dated August 9, 2000. She indicated that she came to the United States because she wanted to have a normal life and reside with her family members. *Id.* Based on the foregoing, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Counsel asserts that the AAO should give weight to the fact that the applicant committed fraud or misrepresentation in order to escape persecution in Cuba. Yet, the applicant has not shown that she fled persecution in Cuba. She left Cuba and traveled to Spain and Portugal, yet she did not apply for asylum or other protection there. Nor has she applied for asylum in the United States. As noted above, the applicant indicated that she came to the United States to have a normal life and reside with her family. While the AAO understands that the applicant sought to join her family and enjoy a better quality of life, the applicant has not established that she committed fraud or misrepresentation to flee persecution. The applicant has not shown that she was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s husband or 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 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; 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight

to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s husband or mother would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should she be prohibited from remaining in the United States. As observed by the director, the applicant has not provided a detailed explanation or evidence of hardship to her family members should the present waiver application be denied. The applicant has not submitted any statements from her relatives in which they address hardship they may suffer should the applicant depart the United States, whether they relocate abroad with her or remain in the United States and endure family separation. Counsel very briefly described hardships that the applicant’s family members may experience, yet without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The 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).

It is noted that counsel suggests that the applicant’s children would suffer hardship should the applicant depart the United States. Direct hardship to an applicant’s child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant’s child, it is reasonable to expect that the child’s emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation.

The AAO recognizes that the applicant’s husband may encounter emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant’s husband’s hardship may be compounded due to sharing in his children’s loss of the applicant’s daily presence. However, the applicant has not established that her husband will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

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.

Based on the foregoing, the applicant has not provided sufficient explanation or documentation to establish by a preponderance of the evidence that her husband or parents will experience extreme hardship should the present waiver application be denied, whether they remain in the United States or depart with the applicant to

maintain family unity. 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 section 212(a)(6)(C) 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.