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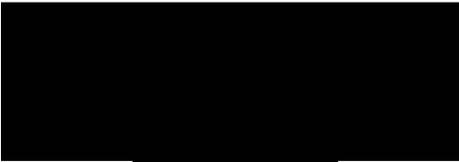
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **DEC 17 2008**

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.

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).

  
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. The record indicates that on August 27, 2002, the applicant arrived at the Miami International Airport from Brazil as a passenger under the Transit Without Visa (TWOV) program en route to El Salvador. The applicant presented a Ecuadorian passport that did not belong to her. During secondary inspection the applicant admitted under oath that the purpose of her trip was to enter the United States and remain permanently, with no intention of pursuing the remainder of her trip. It was determined that the applicant was inadmissible 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 attempted to procure entry into the United States by fraud or willful misrepresentation.<sup>1</sup> The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident parents.

The director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated May 19, 2006.

In support of the appeal, counsel submits the Form I-290B, Notice of Appeal (Form I-290B). The entire record was reviewed and considered in rendering a decision on the appeal.

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

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<sup>1</sup> Counsel, on appeal, asserts that the applicant was a minor when she entered the United States and is thus incapable of having committed fraud and/or willful misrepresentation. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

The AAO notes that counsel has not provided any support to her assertion that a 19-year old is incapable of fraud and/or willful misrepresentation. In fact, the record clearly establishes that the applicant was well aware of the fact that she was misrepresenting herself by providing fraudulent documents. In the Record of Sworn Statement in Administrative Proceeding, dated August 27, 2002, when the applicant was asked whether she knew it was against the law to obtain a passport which was not in her true identity and nationality, the applicant responded "Yes, I am conscious of that." Furthermore, when she was asked if she knew that it was against the law to present said document in order to be boarded on a flight, she responded "Yes, I knew this." Thus, despite counsel's unsupported assertions to the contrary, it has been established that the applicant willfully misrepresented herself by presenting a fraudulent document when she attempted entry to the United States in August 2002. She is thus subject to section 212(a)(6)(C)(i) of the Act.

(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)(1) of the Act provides that:

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....

Pursuant to section 101(a)(15)(C) of the Act, 8 U.S.C. § 1101(a)(15)(C)(1982), and 8 C.F.R. § 212.1(e)(1984), TWOV aliens are exempt from the passport and visa requirements if they are in possession of travel documents establishing their identity, nationality, and ability to enter some other country. However, 8 C.F.R. § 212.1(e)(3)(1984) specifies that the TWOV privilege is unavailable to citizens or nationals of Afghanistan, Cuba, Iraq, or Iran.

In *United States v. Kavazanjian*, 623 F.2d 730 (1st Cir. 1980), the court held that if an alien adopts the TWOV device solely for the purpose of reaching the United States and submitting an asylum application without any intention of pursuing the remainder of the journey, it constitutes a fraud on the United States. The TWOV device is designed to facilitate international travel by permitting aliens traveling between foreign countries to make a stopover in the United States without presenting a passport or visa. See section 212(d)(4)(C), 8 U.S.C. § 1182(d)(4)(C)(1982). To avail himself of the TWOV privilege an alien must establish that he is admissible under the immigration laws; that he has confirmed an onward reservation to at least the next country beyond the United States; and that he will continue his journey and depart this country within 8 hours after his arrival or on the next available transport. See 8 C.F.R. § 214.2(c) (1982); 22 C.F.R. § 41.30 (1984).

In *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984) the BIA found that Afghan nationals who arrived in the United States with fraudulent Turkish passports as TWOV aliens in order to submit applications for asylum were excludable under the second clause of section 212(a)(19) of the Act, 8 U.S.C. § 1182(a)(19)(1982), for attempting to enter the United States by fraud or material misrepresentation.

The applicant in the present case clearly intended to enter the United States as an immigrant and she had no intention of continuing her trip to El Salvador. She was precluded from obtaining TWOV status as a Cuban national and she obtained an Ecuadorian passport in order to obtain TWOV status, travel to the United States, and procure admission by fraud. The applicant is clearly inadmissible

under section 212(a)(6)(C) of the Act, for attempting to procure admission into the United States by fraud or willful misrepresentation of a material fact.

As stated above, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's lawful permanent resident parents are the only qualifying relatives, and hardship to the applicant cannot be considered, except as it may affect the applicant's parents. 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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.

The applicant's lawful permanent resident parents assert that they will suffer extreme hardship were the applicant removed from the United States. As the applicant's parents assert, in a joint statement:

My wife [the applicant's mother] suffers from Diabetes and I suffer from Hypertension. [redacted] [the applicant] helps us with the costs of medicine, with the rent, utilities, and anything she might think she is helpful with. Without her we don't know what we will do.

[redacted] is our only child.... We will fall into depression if our daughter is not allow [sic] to stay in the US....

We will suffer emotionally to see her leave the U.S.... We will suffer economically because she also helps support with our daily living expenses....

Letter from [redacted] and [redacted] dated April 11, 2006.

No objective documentation from the applicant's parents' treating physicians has been provided that explains in detail their current medical conditions, the gravity of the situation, the short and long-term treatment plan and what specific hardships they will face without the applicant's presence. Moreover, no objective evidence is provided to corroborate the applicant's parents' statements regarding their mental state, such as statements from a professional in the mental health field documenting that the applicant's parents suffer and/or will suffer emotional and/or psychological hardship due to the applicant's removal. Going on record without supporting documentary evidence

is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It has thus not been established that the applicant's parent's physical, emotional and/or psychological hardship is any different from other families separated as a result of immigration violations.

As for the financial hardship referenced by the applicant's parents, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (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."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "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."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No evidence has been provided with the appeal that establishes the applicant's and her parents' financial situation, including income and expenses, assets and liabilities. The applicant has thus failed to show that her absence will cause extreme financial hardship to the applicant's parents. In addition, the applicant has not established that were she removed, she would be unable to obtain employment abroad and assist in supporting her family. As such, the AAO concludes that although the applicant's parents may need to make alternate arrangements with respect to their own care were the applicant removed, it has not been established that such arrangements would cause the applicant's parents extreme hardship.

The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). 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 removed from the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's lawful permanent resident parents assert the following hardships were they to relocate to Cuba:

[A]fter escaping from the Castro Regime once in Cuba I will get arrested and detained by the Castro Government. The Cuban Government will not provide us with housing and a job after living in the US for 5 years, therefore it will be difficult to sustain my family there....

*Id.* at 1.

Counsel further states as follows:

All the family...will suffer extreme and unusual hardship because as Cuban's fleeing the system, they will be harassed and persecuted by the Cuban government.... None of them will be able to find a job because they will be seeing [sic] as traitors. If applicant's parents return to Cuba they will not receive any treatment or proper treatment for their medical conditions, to wit: high blood pressure and diabetes...

*See Form I-290B*, dated June 5, 2006.

No documentation has been provided that objectively establishes that the applicant's parents would suffer extreme hardship were they to return to Cuba, their home country. Although counsel has provided information about human rights practices in Cuba, it is general in nature and does not establish that the applicant's parents specifically will suffer extreme hardship in Cuba. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). Moreover, the AAO notes that the applicant is not required to return to Cuba, her home country, due to her inadmissibility. As such, it has not been established that the applicant's lawful permanent resident parents would suffer extreme hardship were they to relocate to Cuba, or any other country of their choosing, to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident parents would suffer extreme hardship if she were not permitted to remain in the United States, and moreover, the applicant has failed to show that her lawful permanent resident parents would suffer extreme hardship were they to relocate abroad with the applicant based on her inadmissibility. 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. The waiver application is denied.