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U.S. Citizenship  
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 12 2008**

IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Trinidad and Tobago, was found 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 is the spouse and son of United States citizens, and he 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 his wife and mother.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife and mother would suffer extreme hardship if the applicant were required to return to Trinidad and Tobago. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's ground of inadmissibility, the record establishes that he attempted to enter the United States, fraudulently, on October 15, 1982. In an effort to misrepresent himself as a citizen of the United States and gain entry, he presented an immigration officer with the passport and social security card of another person. Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (his name and citizenship status) in order to procure entry into the United States. Accordingly, the applicant 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). The applicant does not dispute her inadmissibility; rather, he is filing for a waiver of his inadmissibility.

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

- (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:

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.

A section 212(i) waiver of the bar to admission resulting from a 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 applicant or his children would experience upon

denial of the application is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife and 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).

The applicant is required to demonstrate that his wife and mother would face extreme hardship in the event the waiver application is denied, regardless of whether they join him in Trinidad and Tobago or remain in Florida without him.

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 (9<sup>th</sup> 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 *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States 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.

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 pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

The record reflects that the applicant's wife and mother are both citizens of the United States. His mother was born on February 19, 1921 and his wife was born on June 10, 1968. The applicant and his wife have been married since August 23, 2003 and have a son, born February 4, 2004, who is a citizen of the United States.

In his October 8, 2003 affidavit, the applicant states that he is responsible for caring for his elderly mother and that there is no else who can do so; that his mother cannot drive; that caring for his mother gives him great satisfaction; that, although he made mistakes in the past, he has learned to take responsibility; that Trinidad and Tobago is a very poor country, and he would not be able to earn enough to support his

mother in Florida; and that, as a permanent resident, he would be able to take care of his mother properly and cover any medical expenses she might incur.

In his April 11, 2006 affidavit, the applicant's wife states that she and the applicant are both hard workers; that she does not believe in welfare and tries very hard to avoid unnecessary help from the government; and that the uncertainty over the applicant's immigration situation has caused a great deal of worry and strain.

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."); *Shoostary 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).

As noted previously, the applicant is required to demonstrate that his wife and mother would face extreme hardship in the event the waiver application is denied, regardless of whether they join him in Trinidad and Tobago or remain in Florida without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 wife or mother will face extreme hardship if the applicant relocates to Trinidad and Tobago without them. The record does not establish that they would face greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a husband or adult son is removed from the United States. No evidence was submitted to establish that they would experience financial or emotional hardship that would rise to the level of "extreme" as contemplated by statute and case law. The worry described by the applicant's wife in her affidavit is faced by everyone in her situation, and the applicant has failed to submit any documentation to support the claims regarding his mother made in his 2003 affidavit. The record fails to establish that the hardship either would face would be greater than those experienced by others facing separation from a husband or adult son.

Nor has the applicant established that his wife or mother would face extreme hardship if either joined him in Trinidad and Tobago: again, the record fails to demonstrate that either would face hardship beyond that normally faced by others in their situation. No evidence was submitted, or claims made, to establish that they would experience financial or emotional hardship that would rise to the level of "extreme" as contemplated by statute and case law in such a situation.

In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation nearly always results in considerable hardship to individuals and families, 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 thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that either the applicant’s wife or mother would suffer hardship beyond that normally expected upon the removal of a spouse or adult son.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that either his United States citizen wife or mother would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse or adult son. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.