PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

FEB 22 2005

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date:

IN RE: [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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana who was found to be 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), for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the son of a naturalized citizen of the United States and 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 his parents.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The district director further determined that the applicant failed to provide evidence of his father's lawful permanent resident status. *Decision of the District Director,* dated April 2, 2004.

On appeal, counsel states that the applicant's parents would suffer extreme hardship if the applicant were removed from the United States. Counsel indicates that the applicant's parents depend on him and would suffer psychological, financial, physical and emotional hardship in his absence. *Form I-290B*, dated April 27, 2004.

In support of these assertions, counsel submits a letter, dated May 27, 2004; a psychological evaluation for the applicant's mother, dated May 5, 2004; a letter from a physician treating the applicant and his parents, dated May 1, 2004; a copy of the applicant's individual income tax return for 2003; copies of documents evidencing the home mortgage of the applicant's parents and a document pertaining to the taxable income of the applicant's mother. The entire record was considered in rendering a decision on the appeal.

The record reflects that on September 14, 1993, the applicant presented a fraudulently obtained passport and Canadian landed immigrant papers in an attempt to obtain admission to the United States.

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

> (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:

> (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.

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 himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by 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).

The AAO notes that the record on appeal fails to contain evidence of the lawful permanent residency of the applicant's father, therefore, consideration of extreme hardship in this application is limited to hardship suffered by the applicant's mother, a naturalized United States citizen.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board 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.

Counsel asserts that the applicant's mother would suffer hardship in the absence of the applicant. Counsel contends that the applicant's mother suffers from "significant ventricular ectopy, mitral valve prolapse with mitral regurgitation, and periods of prolonged palpitations which at times render the patient dysfunctional and not controllable by the usual medication." *Letter from M.W. Khan, PhD, MD,* dated May 1, 2004. Counsel indicates that the applicant assists in providing care for his mother. *Letter from Randall L. Johnson,* dated May 27, 2004. The AAO acknowledges that the applicant's mother suffers from these medical conditions, but notes that the record fails to establish that the applicant's mother is unable to function on a daily basis. The record reflects that the applicant's mother maintains employment and is able to drive, as noted in the decision of the district director. *Evaluation by Dr. Sue Futeral,* dated May 5, 2004 ("Parabattie works full-time in retail at JC Penney..."). Further, the record fails to demonstrate that the applicant is uniquely qualified to provide the necessary care for his mother as the applicant's father also resides with her and extended family are present in the immediate area. *Id.* at 4 ("Parabattie has a sister in Maryland, with whom she lived for four years. At this time there are seven siblings all married with children, working in Washington [sic] area."). Moreover, the record indicates that the applicant's brother is in the process of immigrating to the United States in order to provide care to his family. *Id.* ("Parabattie's youngest son is coming to this country next month...").

Counsel submits a psychological evaluation in support of the assertion that the applicant's mother suffers psychological and emotional hardship. The AAO finds the submitted evaluation incoherent and lacking definitive diagnosis. The evaluating medical professional states that the applicant's mother maintains very close relationships with her family and indicates that the family members live near the applicant and his parents. *Id.* at 4. The evaluation then states that the applicant's mother has minimal support at this time and is becoming increasingly depressed. *Id.* The AAO finds that these statements, and others throughout the

evaluation, are inconsistent and offered without context. The evaluator's conclusions that the applicant's mother "is a true success story, and is not at risk for anything but depression" and that "[s]he wants to be independent and not be a burden to others, while helping her son" are perplexing, unsubstantiated and do not appear to support counsel's assertion that the applicant's mother is dependent on the applicant, physically, emotionally or psychologically. *Id.* at 7 and 5, respectively. Without further explanation, the evaluation fails to establish hardship suffered by the applicant's mother.

Counsel contends that the applicant's mother will suffer financial hardship in the absence of the applicant. Counsel submits documentation evidencing the home mortgage of the applicant's parents and income information for the applicant's mother and the applicant in support of this assertion. The AAO notes that, based on the record, the applicant is not named on the mortgage issued to the applicant's parents on their home. Based on the record, a mortgage was issued to the applicant's parents based on their ability to pay the mortgage with their personal assets. *See First Payment Letter including signatures of applicant's mother and father only*, dated March 1, 2004. The record fails to establish that the applicant's parents are unable to meet their financial obligations in the absence of the applicant. Further, the record fails to demonstrate that the applicant will be unable to offer financial support to his parents from a location outside of the United States.

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* 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. Moreover, the AAO notes that the U.S. Supreme Court 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 AAO recognizes that the applicant's mother would endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *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.