U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FL Date: SEP 27 2006

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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida 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 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 attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant's mother is a lawful permanent resident. 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 his family.

The acting 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 Inadmissibility (Form I-601). *Decision of the Acting District Director*, dated August 13, 2001.

On appeal, counsel asserts that hardship to the applicant's children and stepfather was not considered, the acting district director failed to consider all of the reasons for the applicant's mother's hardship and the acting district director did not consider the I-602 waiver. *See Brief in Support of Appeal*, at 4-5, October 30, 2001.

The record includes, but is not limited to, counsel's brief and articles on Cuba. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States with a fraudulent visa on June 16, 1998. As a result of the prior misrepresentation, the applicant is inadmissible to the United States.

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 waiver is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's lawful permanent resident mother. Counsel asserts that the applicant's mother is not the only qualifying relative as the applicant has a lawful permanent resident stepfather and two U.S. citizen sons. *Brief in Support of Appeal*, at 4. The AAO notes that the applicant's lawful permanent resident stepfather and two U.S. citizen sons are not qualifying relatives under the statute and their hardship is only relevant to the extent

it causes hardship to the applicant's mother.[1] 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 (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 lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's mother must be established in the event that she resides in Cuba or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his mother in the event that she resides in Cuba. The record includes several general articles on human rights issues and the totalitarian nature of the Cuban government. However, there is no evidence that the applicant's mother will face any problems if she resides in Cuba. Counsel also makes contentions regarding hardship to the applicant including lack of economic opportunity and the inability to return to Cuba based upon political persecution related to his dissident beliefs. Although the applicant may face economic difficulty, there is no evidence that he would be persecuted. In addition, there is no evidence as to how these events will affect his mother. Due to the paucity of evidence, the AAO finds that the applicant has not demonstrated extreme hardship to his mother in the event that she resides with him in Cuba.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his mother remains in the United States. Counsel states that the removal of the applicant would break the family's unity. *Brief in Support of Appeal*, at 7. No other contentions are made in regard to this prong of the analysis. As such, the record does not reflect that separation will result in extreme hardship to the applicant's mother.

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

[1] Evidence that the applicant's stepfather is a qualifying relative is not included in the file (i.e. a copy of the civil marriage certificate for the applicant's mother to his stepfather showing that the marriage occurred before his eighteenth birthday).

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.

The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, 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.

Counsel also states that the applicant's I-602 waiver was not considered. *Brief in Support of Appeal*, at 5. The AAO notes that it does not have jurisdiction to review Form I-602, Application By Refugee for Waiver of Grounds of Excludability. However, the AAO will address counsel's claim that the applicant is eligible to apply for an I-602 waiver. Counsel asserts that since the Cuban Adjustment Act of 1966 was written and then modified by the Refugee Act of 1980, the adjustment of status law is a refugee law with applications being similar to those under Section 207 or 209 of the Act. *Motion to Accept Form I-602 as Waiver on Cuban Adjustment*, at 1, undated. Counsel states that *In Re: X*, 11 Immig. Rptr. B2-20 AAU Designation: A Dec. 1992 held that a Cuban applying for a waiver must use Form I-602. *Brief in Support of Appeal*, at 5. However, in discussing the filing of Form I-602, the court in *In Re: X* refers to an alien who has been paroled into the United States before April 1, 1980 as a refugee under section 212(d)(5) of the Act and who seeks adjustment of status under section 1 of the Cuban Adjustment Act. As the applicant is not an alien who has been paroled into the United States before April 1, 1980 as a refugee under section 212(d)(5) of the Act, Form I-602 would not be applicable.

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.