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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: **OCT 01 2009**

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.

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, 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 Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). She is the daughter of a Lawful Permanent Resident (LPR). The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her LPR mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), on May 8, 2007.

On appeal, the applicant asserts that the Field Office Director applied the wrong standard of hardship and that the applicant is the sole caretaker of her mother, the qualifying relative, who will suffer extreme hardship if the applicant is excluded.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 indicates that the applicant used a false birth certificate in attempting to enter the United States in 1990. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act. The applicant does not contest this finding. In 2006, the applicant applied for adjustment.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case lawfully resident mother of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 applicant 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 U.S. 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.

> 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence: a brief from counsel for the applicant; a statement from the applicant's mother; statements from the applicant's siblings asserting they are unable to care for their mother; copies of the applicant's and her mother's birth certificates; a statement from the applicant's mother's doctor; and photographs of the applicant and her family.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal,counsel for the applicant asserts that the applicant is the sole caretaker for her mother, the qualifying relative, who suffers from asthma and diabetes, and that the applicant's mother will suffer extreme hardship if the applicant is excluded from the United States. The record contains a statement from the applicant's mother's doctor that establishes she has asthma and diabetes. The statement, however, fails to indicate the severity of the applicant's mother's medical conditions, the level of care needed by the applicant's mother or that the applicant provides for her mother's physical needs. The record also fails to provide sufficient documentation to establish that the applicant's mother requires her financial assistance. The record does not provide information about the applicant's mother's current financial obligations or document that the applicant is providing financial assistance to her mother.

The record includes statements from the applicant's mother and two of her siblings that are in Spanish. Any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a certified, full English-language translation

of the document. 8 C.F.R. § 103.2(b)(3). As translations of these statements are not provided, they will not be considered in these proceedings. The record also includes statements from the applicant's other siblings asserting that, due to their own familial obligations, they are unable to take care of their mother. These statements are brief in nature and fail to fully explain why the respective siblings are incapable of caring for their mother. Moreover, as already discussed, the record does not establish that the applicant's mother requires medical or financial assistance. Without further probative evidence to establish the applicant's mother's medical and financial needs and that she requires the applicant to provide for such needs, the record, as it is currently constituted, does not establish that the impacts of the applicant's exclusion on her mother would rise to the level of extreme hardship if the applicant's mother remains in the United States.

As noted above, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. Neither counsel nor the applicant has asserted any impacts on the applicant's mother if she were to relocate with the applicant. As such, the record does not indicate that the applicant's mother would suffer extreme hardship if she were to relocate to Mexico with the applicant.

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 mother faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her mother as required under section 212(i) of the Act. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.