U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK (GARDEN CITY) Date: SEP 21 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Republic of Guyana, the daughter of a U.S. citizen, the mother of two U.S. citizen sons, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her mother and sons.

The district director found that the applicant had failed to establish extreme hardship to her U.S. mother and denied the application. On appeal counsel argued that the evidence demonstrates that to deny the waiver application would cause extreme hardship to the applicant's mother.

Section 212(a)(6)(C)(i) of the Act provides:

> 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 Act is inadmissible.

In a letter dated September 7, 2006, the applicant stated,

> I entered the [United States] in December 1999 with false documents. I used a photo-switched Guyanese passport with a visa inside to come to the [United States]."

The AAO finds that the applicant knowingly committed fraud or misrepresented a material fact as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's mother is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See 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 nonexclusive list of 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 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. The BIA has held:

> 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).

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 record contains a letter, dated September 7, 2006, from [redacted] a Licensed Master Social Worker in Jersey City, New Jersey. [redacted] stated that the because their developmental milestones were delayed, both of the applicant's children were in the Head Start program and both now receive speech therapy and other special needs services. stated that the special educational needs they require would be unavailable in Guyana, but did not state her basis for asserting that fact. [redacted] stated that the applicant's mother has been diagnosed with diabetes, high blood pressure, angina, and arthritis. [redacted] further stated she has referred the applicant's mother, who has moderate symptoms of clinical depression, to a psychiatrist. The record contains no indication that a psychiatrist has ever evaluated the applicant's mother or, if so, what the outcome of that evaluation was. Finally, [redacted] stated that the applicant's mother and one of the applicant's children are on social security disability, that the mother and both children are on Medicaid, and that the applicant's income is necessary to prevent the family from becoming even more impoverished.

The record contains a letter from [redacted] Dr. [redacted] confirmed that the applicant's mother suffers from angina, gastritis, and diabetes, and stated that the applicant's assistance would be extremely helpful.

The record contains letters, dated January 18, 2006 and September 6, 2006, from the applicant's mother, who also stated that she suffers from diabetes, high blood pressure, angina, and arthritis, and added that she suffers from ulcers, acid reflux, and other, unspecified, medical problems. She stated that because of her medical problems she is now unable to work, and that the applicant cooks, cleans, and shops for her, takes her to her doctors' appointments, sees that she takes her medicines, assists her financially, and otherwise ministers to her needs. She stated that she is unable to live without the applicant in her household and requires that the applicant remain in the United States. The applicant's mother stated, in the January 18, 2006 letter, that the applicant then held a full-time job.

The applicant's mother also stated that the applicant's sons are attached to the applicant and reiterated that they require special education and individual attention. She stated that she and the children would be unable to receive adequate medical care in Guyana, and that the applicant would be unable to find employment, but did not state how she reached those conclusions.

Finally, in the January 18, 2006 letter, the applicant's mother stated,

> Guyana is currently in a state of instability-political, economical [sic], and social. The country is still trying to recover from the devastating floods that ravaged it recently.

In a letter dated September 7, 2006, the applicant reiterated her mother's medical issues and that she cares for her mother. She further reiterated that her sons need special education because of speech impairment and learning disability.

An Individualized Education Program issued by the Board of Education of New York, New York pertinent to the applicant's older son confirms that he has a speech or language impairment and recommends that he be in a general education class with services related to his impairments. An individualized Education Program issued to the applicant's younger son does not contain any diagnosis, but recommends that he be in a 12-month school program including two hours per day with a special education teacher.

Printouts from a pharmacy corroborate that the applicant's mother has been prescribed drugs to treat angina, high blood pressure, diabetes, stomach ulcers, acid reflux, and heart disease risk.

The record contains a letter, dated March 22, 2006, from a building supply company in Brooklyn, New York, stating that the applicant works for that company. A 2005 Form W-2, Wage and Tax Statement, from that company shows that it paid the applicant $812.50 during that year. The applicant's 2005 Form 1040A, U.S. Individual Tax Return shows that the applicant had no other

income during that year. The record also contains three pay statements showing amounts the building supply company paid the applicant during 2006. Those pay statements show that the applicant received gross pay of $130 per week for 20 hours of work. The most recent pay statement, for the pay period ending March 17, 2006, shows year-to-date gross pay of $1,235. That information is difficult to reconcile with the applicant's mother's statement, made on January 18, 2006, that the applicant then held a full-time job.

The applicant's mother is receiving disability payments from social security. However, the applicant did not reveal the amount of those payments, or provide a list of her mother's recurring expenses, and the AAO is unable to determine the degree of hardship that would be represented by losing the applicant's earnings of $130 per week. Under these circumstances, the AAO cannot find that losing the applicant's income would cause her mother financial hardship which, when considered together with the other hardship factors in this matter, rises to the level of extreme hardship.

The evidence demonstrates that the applicant's mother has various health concerns. The applicant and her mother both alleged that, because of those health issues, the applicant's mother requires the applicant's assistance. In support of that assertion, the applicant provided the September 6, 2006 letter from [redacted] and the September 7, 2006 evaluation letter from social worker [redacted] stated that the applicant's assistance would be extremely helpful to her mother, not that it was necessary, or that the applicant's absence would result in hardship.

on the other hand, stated that the applicant's mother ". . . is in dire need of [the applicant's support." stated, "The information contained in this evaluation is based on a review of client records and interviews with the client and her family." The evaluation does not state the duration of the relationship between the [redacted] and the applicant, nor how many times they have met, nor which family members were interviewed. As was noted above, the social worker did not state the source of her information pertinent to the medical care and special education available in Guyana.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report may be based on a single interview between the applicant and one or more family members. The record fails to reflect an ongoing relationship with the applicant or any history of treatment for the depression allegedly suffered by the applicant's mother. The record contains no indication that conclusions reached in the submitted report reflect the insight and elaboration commensurate with an established professional relationship. [redacted] findings appear speculative and diminish the report's value in determining extreme hardship.

The record contains evidence sufficient to show that the applicant presently provides various types of support for her mother, but not sufficient evidence to show that the applicant's mother's condition demands that support, or whether any other help would be available in the applicant's absence. The AAO is unable to conclude that failure to approve the waiver application would result in medical or logistical hardship to the applicant's mother which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

Although the record contains assertions that insufficient medical care would be available to the applicant's mother if she returned to Guyana, it contains no evidence to corroborate those assertions. Further still, although the applicant's mother asserted that Guyana is engulfed in social, political, and economic upheaval, the record contains no evidence to corroborate that assertion and no evidence that, if the assertion is correct, it would adversely affect the applicant or her family members, or to what degree.

The applicant provided no other reason that denial of the waiver application would cause hardship to her mother if the applicant returned to Guyana and her mother remained in the United States. The applicant has not demonstrated that, if she returns to Guyana and her mother remains in the United States, this would cause extreme hardship to her mother.

Further, other than the reasons enumerated above, the applicant has provided no reason that her mother would be unable to accompany her to Guyana to live. Absent any evidence, the AAO cannot find that relocating to Guyana would cause the applicant's mother hardship that would rise to the level of extreme hardship.

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. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a child is removed from the United States.

The record demonstrates that the applicant has loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

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), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship

caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen parent as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.