U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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PUBLIC COPY

U.S. Citizenship and Immigration Services

#5

[redacted]

Date: OCT 06 2011 Office: PANAMA CITY FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City. The matter 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 Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her mother in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative. Specifically, the field office director found that the applicant's mother is not alone because she lives with her son, the applicant's brother, and four of her other children all reside in the United States. In addition, the field office director found that the applicant displayed a pattern of complete disregard for U.S. immigration laws and that she does not merit a favorable exercise of discretion. The field office director denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 17, 2009.

On appeal, the applicant states that even though her brothers and sisters reside in the United States, none of them are able to provide their mother the continuous care that she requires. The applicant contends she was the one who cared for her mother when she lived in the United States and she is the only one able to give her the type of assistance she needs. *Notice of Appeal or Motion (Form I-290B)*, dated May 15, 2009.

The record contains, *inter alia*: a letter from the applicant; a letter from the applicant's mother, [redacted] a letter from [redacted] physician; a letter from a psychologist; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) *In general.* - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

> (v) *Waiver.* – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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.

Section 212(i) provides:

> (1) The Attorney General [now Secretary of Homeland Security] 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 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. . . .

In this case, the record shows that the applicant entered the United States in August 1993 using a B-2 tourist visa and remained beyond her authorized stay until January 2003 when she departed the United States. The record further shows that the applicant attempted to enter the United States on January 25, 2005, using a back-dated stamp in her passport to conceal her overstay. The applicant concedes that she lied on her visa application to obtain a new tourist visa. The record shows that the applicant was removed from the United States on January 26, 2005. The applicant concedes that she was unlawfully present in the United States and that she made fraudulent statements in her attempt to reenter the country. [redacted] dated August 14, 2008; *see also Record of Sworn Statement of* [redacted], dated January 25, 2005. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of one year or more.[1]

[1] The AAO notes that five years have passed since the applicant's removal on January 26, 2005. Therefore, the applicant no longer needs to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247

(separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant's mother, [redacted] states that she is sixty-nine years old and is sick. She states she has severe arthritis, feels a lot of pain, and forgets things. According to [redacted] she cannot sleep, feels confused, and cannot keep track of her medications. [redacted] contends that she cannot control her sadness regarding her daughter's immigration situation and that even though her son lives with her and tries to console her, the situation is unbearable and too painful for her. *Letter from* [redacted] dated August 13, 2008.

A letter from Ms. [redacted] physician states that she has hyperlipidemia, osteoarthritis, gastritis/reflux esophagitis, osteoporosis, and depression. According to the physician, [redacted] takes five prescription medications for her conditions. *Letter from* [redacted] dated May 16, 2009.

A letter from a psychologist states that [redacted] arthritic condition, her mobility, and her cognition make her appear approximately ten years older than her actual age. According to the psychologist, [redacted] has severe arthritis in many parts of her body, causing her to have disfigured fingers and hands, hips, knees, ankles, and feet. The psychologist states that it is extraordinarily difficult for [redacted] to walk and that when she walks, she tilts from side to side. The psychologist also contends that [redacted] has difficulty dressing herself and buttoning her clothes, and that she admits to frequently forgetting things, including the ages of her children. The psychologist diagnosed [redacted] with senile dementia, which is incurable and gets worse over time. The psychologist also contends that [redacted] arthritis is a progressive disease and that she may eventually be unable to dress herself. The psychologist states that [redacted] has become depressed about her daughter's immigration situation and diagnosed her with adjustment disorder with mixed anxiety and depressed mood. *Letter from* [redacted] dated August 6, 2008.

After a careful review of the record, there is insufficient evidence to show that [redacted] will suffer extreme hardship if her daughter's waiver application were denied. If [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The record shows that [redacted] has five other children who live in the United States and that she lives with one of her sons. Although the applicant contends that none of her siblings are able to provide their mother the continuous care that she requires, there is no evidence in the record to corroborate this claim. The AAO notes that the applicant's statement on the Form I-290B is unsigned and there are no letters or statements from the applicant's siblings in the record. Neither the applicant nor [redacted] address why the applicant's siblings are either unable or unwilling to assist in their mother's care. In addition, the letter from [redacted] physician does not address the type of assistance, if any, [redacted] requires and makes no mention that she requires the "continuous" care the applicant contends she will provide. Although the psychologist contends that [redacted] dementia and arthritis will get worse over time and contends that she "will personally live with [redacted] [the applicant]," the applicant's sworn statement indicates that the applicant would not live with her mother. According to

the sworn statement, the applicant's husband does not get along with [redacted] and has prohibited his wife from staying with her mother. *Record of Sworn Statement of* [redacted] Therefore, even assuming [redacted] requires continuous care, it is unclear whether the applicant would provide it. In sum, although the AAO is sympathetic to the family's circumstances, there is insufficient evidence to show that [redacted] will suffer extreme hardship if her daughter's waiver application were denied.

Furthermore, neither the applicant nor [redacted] discuss the possibility of [redacted] returning to Ecuador, where she was born, to avoid the hardship of separation and they do not address whether such a move would represent a hardship to her. Although the record shows that [redacted] is currently seventy-two years old and has several medical and mental health conditions, the letter from her physician does not contend that [redacted] cannot travel or return to Ecuador due to her health conditions. There is no contention that her medical problems cannot be adequately monitored and treated in Ecuador. To the extent the psychologist diagnoses [redacted] with senile dementia and contends that her arthritis is so severe that it is difficult to walk or dress herself, the AAO notes that the psychologist's evaluation is based on a single interview he conducted with [redacted] on August 5, 2008. The psychologist does not claim to have conducted a medical exam on [redacted] nor does he contend he is qualified to diagnose her medical conditions. Moreover, the letter from [redacted] physician is dated May 16, 2009, approximately nine months after the psychologist's interview with [redacted] on August 5, 2008, in which he diagnosed [redacted] with senile dementia; however, notably, the letter from her physician does not diagnose her with dementia. Although the input of any mental health professional is respected and valuable, the fact that the evaluation was based on a single interview and makes a diagnosis that conflicts with the letter from [redacted] physician diminishes the evaluation's value to a determination 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.