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U.S. Citizenship
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Services H

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FILE: Office: SAN FRANCISCO Date: **MAY 26 2005**

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, California, denied the waiver application. The matter is now before the Administrative Appeals Office, Washington DC (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines 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 used fraud or misrepresentation of a material fact to gain admission into the United States. The applicant is the child of a lawful permanent resident of the United States. Pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), he seeks a waiver in order to reside in the United States with his lawful permanent resident mother.

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. *Decision of the District Director*, dated May 21, 2004.

The record shows that, on June 5, 1993, the applicant entered the United States by presenting a Philippine passport containing a U.S. nonimmigrant visa under the name [REDACTED]. On January 27, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's lawful permanent resident mother. On July 23, 2003, the applicant appeared at CIS' San Francisco District Office. The applicant testified that, he had entered the United States by presenting a Philippine passport and U.S. nonimmigrant visa under a fraudulent name in 1993.

On October 24, 2003, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On May 21, 2004, the district director issued a notice of denial of the application as the applicant was inadmissible because he had procured admission to the United States, by fraud or misrepresenting a material fact, and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel states that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Counsel contends that the applicant did not misrepresent a material fact to gain admission under the meaning of section 212(a)(6)(C)(i) of the Act, that United States Citizenship and Immigration Services (USCIS) was incorrect in retroactively applying the current version of section 212(a)(6)(C)(i) of the Act to the applicant and that USCIS incorrectly evaluated whether the applicant's mother met the section 212(i) extreme hardship standard, failing to consider all relevant factors cumulatively in reaching its decision. *See Applicant's Brief*, dated June 17, 2004. Counsel also states that the applicant merits a favorable exercise of discretion.

The entire record, including counsel's brief on appeal and all documents created for and submitted pursuant to the application for admission and application for waiver have been reviewed in making this decision.

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.

Counsel contends that, while the applicant admits to gaining admission to the United States by presenting a passport and U.S. nonimmigrant visa issued under a false name, there was no fraud or willful misrepresentation of a material fact. *Brief in Support of Appeal*, dated June 17, 2004.

The applicant obtained a Philippine passport and U.S. nonimmigrant visa under the name “Cristobal Mendoza” in 1993 and gained admission to the United States using that passport and visa in June 1993. The record indicates that at the time the applicant obtained the fraudulent passport and visa both his parents were lawful permanent residents of the United States who resided in the United States and that all of the applicant’s siblings had been admitted to the United States as lawful permanent residents. The applicant’s father had filed immigrant visa petitions on behalf of the applicant’s mother and her children. However, the applicant was not entitled to lawful permanent resident status at the time his mother and siblings became lawful permanent residents because he was over 21 and no longer eligible for a 2A second preference family-sponsored immigrant visa as an unmarried child of a lawful permanent resident. As such, when the applicant turned 21 he became a 2B second preference family-sponsored immigrant to whom a visa number was not available at the time the rest of his family members became lawful permanent residents. The record reflects that at the time the applicant entered the United States all of his family members were located in the United States and that he no longer had strong ties to the Philippines.

In support of his contention that the applicant’s misrepresentation was not willful, counsel contends that an assumed name at entry is not automatically, presumptively, or conclusively considered “material,” citing *Matter of S_ and B_C_*, 9 I&N Dec. 436 (BIA 1960; AG 1961). In *Matter of S_ and B_C_*, the Attorney General found that the test for materiality should be applied to misrepresentations relating to identity and that while a misrepresentation as to identity will generally have the effect of shutting off an investigation the application of the test should turn on the answers to three questions:

First, does the record establish that the alien is excludable on the true facts? If it does, then the misrepresentation was material. If it does not, then the second and third questions must be considered . . .

Second, did the misrepresentation tend to shut off a line of inquiry which is relevant to the alien’s eligibility? A misrepresentation as to identity . . . would almost necessarily have shut off an opportunity to investigate part or all of the alien’s past history, and thus have shut off a relevant investigation

Third, if a relevant line of inquiry has been cut off, might that inquiry have resulted in a proper determination that the alien be excluded? On this aspect of the question the alien bears the burden of persuasion and proof . . .

. . . Where the opportunity for adequate investigation has been lessened because of the alien's misconduct in making a deliberate misrepresentation, either because of the passage of time or for other reasons, the alien's evidence of his eligibility may be unpersuasive, for the same reasons that have led courts to strike or to place little or no weight on evidence with respect to which the opposing party, through no fault of his own, was denied adequate opportunity for cross-examination . . .

On the other hand, where the available facts indicate the existence of a substantial question as to the alien's eligibility to enter the United States, the possibility of such an impairment of investigative opportunity may in some cases be sufficient to warrant a holding that the alien's misrepresentation was material . . .

Matter of S_ and B_C_, *Id.* at 448-450. Counsel argues that for the district director to find that the applicant made a "material misrepresentation" he would need to show that the applicant would have been denied a visa (or entry) in his real name or the applicant had some other ineligibility. However, since the applicant's misrepresentation as to identity shut off a relevant investigation in regard to whether the applicant was ineligible for a nonimmigrant visa because he was an intending immigrant, the applicant bears the burden of persuasion and proof that such a relevant line of inquiry would not have resulted in a proper determination that the applicant be excluded or denial of the visa or entry into the United States.

An applicant for a B-1/B-2 nonimmigrant visa must evidence his intention to depart the United States through employment, family and social ties to his residence abroad. 9 Foreign Affairs Manual 41.31 N.2. A consular officer and an immigration officer at a Port of Entry must determine whether a nonimmigrant actually seeks to enter the United States permanently. Under section 214(b) of the Act, 8 U.S.C. § 1184(b), there is a legal presumption that all persons seeking entry are immigrants. As such, by obtaining and presenting a Philippine passport with a U.S. nonimmigrant visa under an alias, essentially concealing his identity, the applicant's misrepresentation or concealment was predictably capable of affecting (i.e. had a natural tendency to affect) the official decision of the consular officer and the immigration officer at the Port of Entry as to whether the applicant was an intending immigrant and entitled to a nonimmigrant visa or entry into the United States as a nonimmigrant. *Kungys v. U.S.*, 485 U.S. 759 (1988). Counsel contends that *Matter of Bosuego*, 17 I&N Dec. 125 (BIA 1979), in which the Board of Immigration Appeals (BIA) determined that, where the true facts concealed by the respondent were she was a college graduate with a sister residing in the United States, would not in and of themselves have barred her admission as a nonimmigrant when the record contained no additional facts which would have influenced the consul one way or another in determining whether she was inadmissible as a *mala fide nonimmigrant*, is applicable to the applicant's case. However, the BIA's determination that the Service failed to establish a factual foundation for a finding that further inquiry might well have resulted in a proper determination of inadmissibility and the burden accordingly never shifted to the respondent to show that no such finding could have properly been made, is distinguishable from the instant case. In *Bosuego*, the burden of proof was on the Service to establish the materiality of the respondent's misrepresentations as grounds for deportation. However, in the instant case, the burden of proof remains with the applicant. Additionally, while the record in *Bosuego* contained no reference to other pertinent factors, such as the presence or absence of family and community ties in the respondent's home country at the time of

application, which would have influenced the consul's determination with respect to the respondent's bona fides as a nonimmigrant, here the record contains evidence that the applicant had very little ties to the Philippines left after all his family members emigrated to the United States.

The AAO finds counsel's contentions that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act to be unpersuasive. As stated above, the record contains evidence that the applicant was not eligible for a nonimmigrant visa or entitled to admission to the United States as a nonimmigrant due to his lack of ties to the Philippines and his immigrant intent. While counsel discusses the standards for determining whether a misrepresentation as to identity is material he does not specifically address why the applicant's misrepresentation was not material in the instant case. As such, the applicant has failed to establish that the relevant line of inquiry shut off by the concealment of his true identity would not have resulted in a proper determination that he be excluded or denied the visa or entry into the United States. The AAO finds that the misrepresentation is material to obtaining admission into the United States and a violation of section 212(a)(6)(C)(i) of the Act.

Counsel contends that the applicant's application for a waiver should be considered under the pre-IIRIRA section 212(i) of the Act because the conduct that caused the applicant to be inadmissible occurred prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996). Counsel asserts that, as provided in *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (2001), the law that existed at the time of the applicant's conduct should apply.

In *INS v. St. Cyr*, when considering the retroactive application of IIRIRA provisions that made a section 212(c) of the Act waiver unavailable to the applicant, the U.S. Supreme Court stated:

IIRIRA's elimination of § 212(c) relief for people who entered into plea agreements expecting that they would be eligible for such relief clearly attaches a new disability to past transactions or considerations. Plea agreements involve a *quid pro quo* between a criminal defendant and the government, and there is little doubt that alien defendants considering whether to enter into such agreements are acutely aware of their convictions' immigration consequences. The potential for unfairness to people like St. Cyr is significant and manifest. Now that prosecutors have received the benefit of plea agreements, facilitated by the aliens' belief in their continued eligibility for § 212(c) relief, it would be contrary to considerations of fair notice, reasonable reliance, and settled expectations to hold that IIRIRA deprives them of any possibility of such relief. *INS v. St. Cyr*, *Id.* at 291.

The key to the reasoning in *St. Cyr* is the applicant's reliance upon the then existing statute when he made the plea agreement. The record in the instant case does not include conduct influenced by reliance upon prior law. There is no indication that the applicant had any awareness at all about the relationship between his conduct and inadmissibility or the availability of waiver relief.

Citing to *Matter of Soriano*, 21 I. & N. 516 (BIA, AG 1996) the precedent opinion in *Cervantes-Gonzalez*, stated that a statute is not retroactive if:

[I]t does not impair rights a party possessed when he or she acted, increase a

party's liability for past conduct, or impose new duties with respect to transactions already completed. More specifically, an intervening statute that either alters jurisdiction or affects prospective injunctive relief generally does not raise retroactivity concerns, and, thus, presumptively is to be applied in pending cases. [citation omitted]. Likewise, the Attorney General concluded [in *Soriano*] that the new provisions in section 212(c) applied to pending cases because the new legislation acted to withdraw her authority to grant prospective relief; it did not speak to the rights of the affected party. [citation omitted]. The effect was therefore to alter both jurisdiction and the availability of prospective relief to the alien. [citation omitted]. *Cervantes-Gonzalez*, 22 I&N Dec. 560 at 564 (BIA 1999).

The BIA held in *Cervantes-Gonzalez* that a request for a section 212(i) waiver of the Act is a request for prospective relief and as such its restrictions may be applied to conduct which predates passage of the current statute. As is required, the AAO will rely on *Cervantes-Gonzalez* here.

Counsel also contends that the applicant established extreme hardship to his lawful permanent resident mother. Section 212(i) of the Act, 8 U.S.C. § 1182(i) 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 . . .

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. The record indicates that the applicant's qualifying relative is his lawful permanent resident mother.

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. *Cervantes-Gonzalez, Id.* at 565. *Cervantes-Gonzalez* sets forth a list of non-exclusive 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).

If extreme hardship is established, the applicant has established that he is legally eligible for a waiver. However, even if extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the applicant. See *Matter of Mendez*, 21 I. & N. Dec. 296 (BIA 1996). There is no exercise of discretion if the applicant does not meet the legal requirements for a waiver.

Counsel contends that all that is required to demonstrate extreme hardship is the resulting hardship to the qualifying relative in relocating to the applicant's home country. Counsel also argues that the focus in determining extreme hardship should rest solely on the qualifying relative's ties to the United States, lack of ties to the applicant's home country, and the impact that relocating would have on the qualifying relative. Counsel concludes that for the district director to make analysis or evaluation as to the level of stress, misery, etc. experienced by qualifying relatives or to apply factors that are outside those factors listed in *Cervantes-Gonzalez* is an abuse of discretion. Counsel's arguments are unpersuasive. In *Cervantes-Gonzalez*, the BIA clearly states that the factors it lists are "not exclusive and also that the Attorney General and her delegates have the authority to construe extreme hardship narrowly." *Supra* at 566. Furthermore, in *Cervantes-Gonzalez*, the BIA clearly states that the factors it lists must still establish that the qualifying relative would suffer extreme hardship and that "'(e)xtrême hardship' is hardship that is . . . unusual or beyond that which would be normally be expected upon deportation . . . the common results of deportation are insufficient to prove extreme hardship." *Supra* at 567. Counsel's arguments in interpreting the factors listed in *Cervantes-Gonzales* have no merit.

The record reflects that the applicant's mother, [REDACTED] is a native of the Philippines who has been a lawful permanent resident of the United States since 1991. [REDACTED] has a 21-year old son, a 33-year old daughter, and a 34-year old son, who are all naturalized U.S. citizens and reside in the United States. The record reflects further that the applicant is in his 30's, [REDACTED] is in her 50's, and [REDACTED] has some health concerns.

Counsel does not assert that [REDACTED] would suffer financial hardship if she were to remain in the United States without the applicant. However, in her affidavit, [REDACTED] states she will suffer financial hardship if she remains in the United States without the applicant. [REDACTED] asserts that if she "were to remain in the U.S., without [the applicant], I will lose my house, and will up (sic) homeless, and worse, will be forced to declare bankruptcy . . . we have purchased a house . . . I could not afford to pay our monthly mortgage fee on my salary . . . he helps defray the expenses of my youngest son . . . and [REDACTED] promised to help me put him through medical school." Financial records indicate that [REDACTED] is the primary source of financial support for the family. In 2002, [REDACTED] contributed approximately \$37,297 to the household income. The record reflects that, in 2002, the applicant earned \$12,643. Financial records indicate that the applicant has never claimed [REDACTED] on his tax returns and there is no evidence in the record to suggest that [REDACTED]

██████████ is completely financially dependent upon the applicant. While ██████████ states that both her other two children have moved out of the house and would not be in a position to help her financially, financial records indicate that the house in which ██████████ resides was purchased by not only her and the applicant, but also by her daughter. ██████████ asserts that she would be unable to afford to visit the applicant in the Philippines and would have to support him in the Philippines because he does not have family ties there and may be unable to find a job in the Philippines. There is no evidence in the record to suggest that the applicant would be unable to find employment in the Philippines or that this employment would be unable to sustain his daily needs. The record shows that, even without assistance from the applicant, ██████████ has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that ██████████ may not be able to “live comfortably” and send her youngest son to medical school, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. The record does not support a finding of financial loss that would result in an extreme hardship to her if she had to support herself even when combined with the emotional hardship discussed below.

Counsel contends that ██████████ will suffer emotional hardship if she were to remain in the United States without the applicant because the threatened separation of ██████████ from the applicant has caused her major depression. As discussed below, there is no evidence that ██████████ suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

Counsel asserts that ██████████ would face extreme hardship if she relocated to the Philippines in order to remain with the applicant. Counsel contends that ██████████ would face extreme hardship because she no longer has any immediate family members in the Philippines, it would be an emotional hardship to leave her family in the United States, and the substandard economic situation in the Philippines would not afford her the employment, medical care and standard of living opportunities that she would have in the United States. Counsel also asserts that ██████████ may lose her lawful permanent resident status if she returns to the Philippines with the applicant. Counsel contends that ██████████'s separation from her family ties in the United States is the most important factor in determining extreme hardship. Counsel points to *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) as precedent supporting this contention. The Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute extreme hardship, the hardship must still be beyond the common results of deportation to constitute “extreme hardship.”

In support of counsel's contention, he submitted a psychological report, dated October 15, 2003, indicating that [REDACTED] "is definitely showing signs of anxiety and depression . . . this family is suffering from a great deal of stress . . . she feels very insecure and dependent on [the applicant] . . . [REDACTED] has many symptoms indicative of depression." The psychologist diagnosed [REDACTED] with "Major Depressive Disorder", "Generalized Anxiety Disorder" and "Post Traumatic Stress Disorder." The report was based on a single meeting with [REDACTED] and the psychological report does not indicate [REDACTED] has received psychological treatment or evaluation other than during this one appointment. The report can, therefore, be given little weight.

[REDACTED] states she suffers from hypertension and goiter for which she is required to eat a special diet and take regular medication. She claims that the applicant's current immigration problems have caused her physical conditions to become worse and that she would not receive required medical care if she were to accompany the applicant to the Philippines. Counsel submits medical documentation to support this contention. The medical documentation provided only shows that [REDACTED] has a slightly increased cholesterol level and that her July 2003 pap smear indicated that there were no signs of cancer. None of the medical documentation in the record suggests that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. In her affidavit, [REDACTED] states that the Philippines is not only economically depressed and she may be unable to find employment, but that it is dangerous due to the terrorist activity culminating in several violent episodes and explosions in the busy spots of the nation. She claims that her life may be in danger and her mobility may be hampered because of the precarious political conditions in the Philippines. In support of these contentions, counsel submitted country condition reports. However, the country condition reports submitted indicate that the Philippines is generally hospitable to travel. The AAO notes that the country conditions reports submitted by counsel do not refer to the area from which the applicant and [REDACTED] come. While the hardships [REDACTED] faces are unfortunate, the hardships faced by her with regard to adjusting to a lower standard of living and separation from family, are what would normally be expected with any parent accompanying a deported alien to a foreign country. Finally, the AAO notes that, as a U.S. lawful permanent resident, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond 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 his lawful permanent resident mother as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an 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.