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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: LOS ANGELES, CA

Date: AUG 14 2007

IN RE: Applicant: [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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application denied.

The applicant is a native and citizen of Mexico 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant asserts, through counsel, that her U.S. citizen mother suffers from diabetes and schizophrenia, and that she is her mother's primary caretaker. The applicant asserts that her mother would suffer extreme emotional and physical hardship if the applicant is denied admission into the United States, and she asks that U.S. Citizenship and Immigration Services (CIS) waive her ground of inadmissibility.

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

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.

The record reflects that during her consular U.S. visa interview in July 1994, the applicant concealed the fact that she lived unlawfully in the United States for over a year in 1988 and 1989. Accordingly, the applicant is inadmissible pursuant to the terms of section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 record reflects that the applicant's mother is a U.S. citizen. The applicant's mother is thus a qualifying relative for section 212(i) of the Act purposes, and the applicant is eligible to apply for waiver of inadmissibility relief under section 212(i) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors that it deemed relevant in determining whether an alien had

established extreme hardship. The factors included 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now, removal or inadmissibility] are insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The record contains the following evidence relating to the applicant's extreme hardship claim:

A March 12, 2004 letter from the applicant's mother [REDACTED] stating that she is elderly and needs constant medical attention, and that the applicant takes care of her and makes sure she takes her medication.

A February 23, 2004 letter from the California Department of Mental Health stating in pertinent part that [REDACTED] has been a patient at the Antelope Valley Mental Health Center since October 18, 1994, that she is diagnosed with Schizophrenia Paranoid Chronic DSM IV 293.32, and that she has appointment at the Center every one to two months. The letter states that [REDACTED] is disabled and under treatment, and that she is in need of assistance with all of her basic needs, such as bathing, cooking, dressing, transportation and taking prescribed medications (Paxil 10mg and Risperdal .5mg.)

A July 19, 2005 letter from [REDACTED] of the Molina Medical Center, referring [REDACTED] to a podiatrist for ingrown toenails, diabetes.

A September 30, 2005 affidavit from the applicant indicating that her family lives in the U.S., and that she is the youngest daughter of four daughters and three sons. The applicant states that due to her mother's medical condition and age, she attends personally to her mother's necessities, such as preparing her meals, assisting her with bathing, making sure she takes her medication, and making sure that her mother's blood sugar levels are tested daily. The applicant states that a separation would affect her mother's emotional and physical health.

Additional evidence in the record reflects that the applicant's mother is a 73-year-old widow. Evidence in the record additionally reflects that the applicant has been a widow since November 1991, and that she has three children (born in California in December 1989; in Mexico in December 1991; and in California in October 1997.) The record contains a June 6, 2003 letter from [REDACTED] reflecting that the applicant's U.S. citizen brother, [REDACTED] works full-time for the company. The record also contains 2001 and 2002, federal tax documents reflecting that the applicant and another sister [REDACTED] were listed as dependents on her brother, [REDACTED] tax returns. In addition, the record contains a copy of the applicant's 2003 employment authorization card, and copies of the applicant's 1993 and 1995 California identification cards.

Upon review of the totality of the evidence, the AAO finds that the applicant has established her mother would suffer extreme emotional and physical hardship if she moved with the applicant to Mexico. The AAO finds, however, that the evidence in the record fails to establish that the applicant's mother would suffer extreme emotional or physical hardship if the applicant is denied admission into the U.S., and her mother remains in the United States without her.

In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Although the applicant and [REDACTED] indicate in their affidavits that the applicant is her mother's primary caretaker, the AAO notes that the evidence in the record does not corroborate this assertion. The California Department of Mental Health medical evidence contained in the record reflects that [REDACTED]'s schizophrenia diagnosis and treatment began many years ago, in 1994. The applicant's California identity documents, and her brother's federal tax forms reflect that the applicant has resided at several different addresses over the years, and the record contains no evidence to establish [REDACTED]'s address, or to establish if, and for how long the applicant resided with her mother. The evidence in the record additionally reflects that the applicant is raising three children, and the evidence reflects that the applicant has applied for, and has obtained worker's authorization. Moreover, the medical podiatrist referral letter that notes that [REDACTED] has diabetes provides no information regarding the severity of [REDACTED]'s diabetes, or any treatment that [REDACTED] requires for her diabetes. Furthermore, the AAO notes that the applicant has several siblings living in the United States, and the record contains no evidence to establish or demonstrate that the applicant's siblings are unable to obtain or provide care for [REDACTED].

A section 212(i) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her mother would suffer extreme hardship in the U.S. if the applicant is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. A review of the evidence in the record, when considered in its totality, reflects that the applicant has failed to establish that if her mother remains in the U.S., she would suffer hardship beyond that which is normally to be expected upon removal. Accordingly, the AAO finds that the applicant has failed to establish that she is eligible for relief under section 212(i) of the Act. The present appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.