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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: OCT 30 2008

IN RE: Applicant:

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 waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba. The record indicates that on January 1, 2001, the applicant arrived at the Miami International Airport from Jamaica as a passenger under the Transit Without Visa (TWOV) program en route to Venezuela. The applicant presented a Venezuelan passport that did not belong to her. During secondary inspection the applicant admitted under oath that the purpose of her trip was to submit an asylum application without any intention of pursuing the remainder of her trip. It was determined that the applicant was inadmissible under 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 entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident mother.

The district director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated July 24, 2006.

In support of the appeal, counsel submits a brief. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

Section 212(i) of the Act provides that:

The Attorney General (now the Secretary 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 a

lien 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.

Pursuant to section 101(a)(15)(C) of the Act, 8 U.S.C. § 1101(a)(15)(C)(1982), and 8 C.F.R. § 212.1(e)(1984), TWOV aliens are exempt from the passport and visa requirements if they are in possession of travel documents establishing their identity, nationality, and ability to enter some other country. However, 8 C.F.R. § 212.1(e)(3)(1984) specifies that the TWOV privilege is unavailable to citizens or nationals of Afghanistan, Cuba, Iraq, or Iran.

In *United States v. Kavazanjian*, 623 F.2d 730 (1st Cir. 1980), the court held that if an alien adopts the TWOV device solely for the purpose of reaching the United States and submitting an asylum application without any intention of pursuing the remainder of the journey, it constitutes a fraud on the United States. The TWOV device is designed to facilitate international travel by permitting aliens traveling between foreign countries to make a stopover in the United States without presenting a passport or visa. See section 212(d)(4)(C), 8 U.S.C. § 1182(d)(4)(C)(1982). To avail himself of the TWOV privilege an alien must establish that he is admissible under the immigrant laws; that he has confirmed an onward reservation to at least the next country beyond the United States; and that he will continue his journey and depart this country within 8 hours after his arrival or on the next available transport. See 8 C.F.R § 214.2(c) (1982); 22 C.F.R. § 41.30 (1984).

In *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984) the BIA found that Afghan nationals who arrived in the United States with fraudulent Turkish passports as TWOV aliens in order to submit applications for asylum were excludable under the second clause of section 212(a)(19) of the Act, 8 U.S.C. § 1182(a)(19)(1982), for attempting to enter the United States by fraud or material misrepresentation.

The applicant in the present case clearly intended to enter the United States in order to apply for asylum and she had no intention of continuing her trip to Venezuela. She was precluded from obtaining TWOV status as a Cuban national and she obtained a Venezuelan passport in order to obtain TWOV status, travel to the United States, and apply for asylum. Based on the above the applicant is clearly inadmissible under section 212(a)(6)(C) of the Act, for attempting to procure admission into the United States by fraud or willful misrepresentation of a material fact.

As stated above, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's lawful permanent resident mother is the only qualifying relative, and hardship to the applicant, her children, her grandchildren, or her sibling cannot be considered, except as it may affect the applicant's mother. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

The applicant's lawful permanent resident mother asserts that she will suffer extreme hardship were the applicant removed from the United States. As the applicant's mother states,

I, [redacted] of 75 years of age as of July 31st, am the mother of [redacted] [the applicant]. I live in Miami, and I have several medical illnesses, such as arthritis and diabetes. I have been admitted into hospitals...about 4 to 5 times a year, and at times I endure so much pain that my doctors have to feed and bathe me. I simply can not do it alone.

I have a son...who is 55 years old. He has a medical heart illness, and is unable to help me for the fact that he has his own family to take care of...

Letter from [redacted] undated.

To begin, no objective documentation from a licensed medical professional has been provided that explains in detail the applicant's mother's current medical condition, the gravity of the situation, its short and long-term treatment plan and what specific hardships she will face without the applicant's presence. In addition, no documentation has been provided to establish that the applicant's mother's son and/or adult grandchild and/or community members are unable to assist her with her day to day care, should the need arise. The AAO notes that the applicant's mother lives in Miami, Florida and the applicant lives in Kissimmee, Florida, approximately 180 miles apart. As such, the applicant's mother presumably has a support network nearby as her daughter is approximately 3 hours away and due to said distance is unable to assist her on a day to day basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, the AAO concludes that although the applicant's mother may need to make alternate arrangements with respect to her own care were the applicant removed, it has not been established that such arrangements would cause the applicant's mother extreme hardship.

The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being removed from the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why the applicant's mother is unable to relocate to Cuba, her birth country, or any other country of their choosing, to accompany the applicant were she removed.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident mother would suffer extreme hardship if she were not permitted to remain in the United States, and moreover, the applicant has failed to show that her lawful permanent resident mother would suffer extreme hardship were she to relocate abroad with the applicant based on her inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a 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 remains entirely with the applicant. 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. The waiver application is denied.