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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: MEXICO CITY (PANAMA CITY)

Date: APR 08 2009

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.

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).

John F. Grisson
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Guyana, 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 an immigration benefit by fraud and/or willful misrepresentation. Specifically, in 1998, when directly questioned by the interviewing officer in regards to her immigrant visa application, the applicant responded that her step-father, the petitioner on the Form I-130, Petition for Alien Relative (Form I-130), was alive, when in fact, he had died in December 1997.¹ The applicant is applying for 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 U.S. citizen 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 25, 2006.

In support of the appeal, counsel submits the following, *inter alia*: Form I-290B, Notice of Appeal (Form I-290B), dated November 7, 2006; an affidavit from the applicant, dated October 23, 2006; an affidavit from the applicant's U.S. citizen mother, dated November 8, 2006; and medical documentation relating to the applicant's mother and her husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

With respect to the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act because she previously attempted to procure an immigration benefit by fraud and/or willful misrepresentation, as discussed above, counsel contends that the applicant did not intend to defraud the government. *See Form I-290B*, dated November 7, 2006.

The Department of State's Foreign Affairs Manual [FAM] provides, in pertinent part:

¹ As detailed in notes from the American Embassy in Georgetown, Guyana,

Savitrie Balgobind is currently ineligible to enter the United States under INA Section 212(a)(6)(C)(i) for misrepresentation. During an application in 1998 for an immigrant visa based on a petition by her stepfather Chandrapaul, she stated that the petitioner was alive when directly questioned by the interview officer....

Notes from the American Embassy-Immigrant Visas, Georgetown, Guyana. The record establishes that the applicant's step-father had died on November 29, 1997. *See Death Certificate*, dated December 1, 1997.

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa...

"A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- (1) The alien is excludable on the true facts; or
- (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

9 FAM 40.63 N. 6.1. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain an immigration benefit by fraud and/or misrepresentation. As the record indicates, had the applicant disclosed that her step-father, the petitioning relative of the Form I-130, was deceased, the consular officer would have denied the immigrant visa request, as the applicant would no longer have been statutorily eligible for the immigrant visa. The willful misrepresentation by the applicant clearly shut off a pertinent line of inquiry that would have impacted the likelihood of successfully obtaining a immigrant visa, had it not been discovered by the consular officer. The applicant in her own affidavit confirms this willful misrepresentation. As she states,

My step-father petitioned for me in 1996.... My step-father passed away in November 1997. In 1998 I was scheduled for an interview. At the interview, I made a serious error by telling the Consulate that my step-father was alive when in face he had passed away just a few months earlier. I am very ashamed of this mistake-- I cannot justify it by saying that I was eager to join my mother. This was wrong, and I would never do something like that again.

Affidavit of [REDACTED] dated October 23, 2006.

As such, based on the evidence in the record, the AAO concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.²

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:

- (1) 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 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 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...

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying

² References are made by counsel to the fact that the applicant was unaware that the lawyer that had been retained by the applicant's mother had presented an altered photograph of her stepfather to document that he was alive, in 1999, when in fact, he was deceased as of November 1997. As the AAO has already determined that the applicant is subject to section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility under section 212(i) of the Act, for her willful misrepresentation with respect to the petitioning relative's death at the immigrant visa interview in 1998, as discussed above, it is not necessary to evaluate whether her involvement (or lack thereof) with respect to the planning and/or execution of the altered photograph of her stepfather in 1999 amounts to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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 U.S. citizen mother contends that she will suffer extreme hardship if her daughter is unable to reside in the United States. As summarized by counsel, the applicant's spouse needs her daughter to assist in running the household, helping financially and giving her mother physical and emotional assistance in her declining years. *See Form I-290B, Notice of Appeal*, dated November 7, 2006. The applicant's mother further elaborates that her current husband, [REDACTED], is unable to work and she alone must meet all of the expenses, and she hopes that by having the applicant reside in the United States, she would be able to "pick up the financial aspect..." *Affidavit of [REDACTED]* dated November 8, 2006.

In support of the applicant's mother's statements, a letter is provided by her treating physician, confirming that the applicant's mother suffers from lower back pain and knee pain, which has made it increasingly difficult to perform her daily routines. *Letter from [REDACTED]*, dated October 24, 2006.

The letter provided by [REDACTED] does not establish that the applicant's physical absence is causing her mother extreme physical and/or emotional hardship. In the letter [REDACTED] lists a number of medical conditions for which he is treating the applicant's mother. He also states "the patient claims that her increased lower back pain and knee pain has made it increasingly difficult to perform her daily routines." *Letter from [REDACTED]*. Dr. [REDACTED] did not indicate that he had conducted a medical examination which resulted in a finding that her conditions had deteriorated to a point which limited her ability to work or perform her daily routines.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or 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 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 exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

As for the financial hardship referenced by the applicant's mother, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986)

(holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No evidence has been provided with the appeal that establishes the applicant’s, her mother’s and her mother’s husband’s financial situation, including income and expenses, assets and liabilities. The applicant has thus failed to show that her continued physical absence will cause her mother extreme financial hardship. Nor has the applicant established that she is unable to obtain employment abroad and assist in supporting her mother, should the need arise. Although the applicant’s mother references the problematic economic environment in Guyana, no documentation has been provided to corroborate her assertion that the applicant is unable to obtain gainful employment in Guyana. Moreover, the AAO notes that the applicant’s mother currently provides financial support to the applicant; as such, the applicant’s mother’s financial hardship can not be deemed to be extreme, as she is able to support her adult daughter abroad. *Memorandum Report of Interview of Ineligible Applicant for Immigration Visa*, dated December 16, 2005. Finally, counsel states that the applicant’s mother is ill and barely holding her job. *See Form I-290B*. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, the AAO concludes that although the applicant’s mother may need to make alternate arrangements with respect to her own emotional, physical and financial care were the applicant unable to reside in the United States, it has not been established that such arrangements would cause the applicant’s mother extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant’s waiver request. In this case, counsel has not asserted any reasons why the applicant’s U.S. citizen mother is unable to relocate to Guyana, her home country, to reside with the applicant.

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 U.S. citizen mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates 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 and/or refused admission. There is no documentation establishing that her emotional, physical and/or financial hardship would be any

different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the financial strain and emotional and physical hardship she would face rise to the level of "extreme" as contemplated by statute and case law. 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.