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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: AUG 05 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act,  
8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:



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. Grissom  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States in about March 1999 after providing a false name and stating that she intended to visit family members temporarily. The applicant is the daughter of U.S. citizen parents and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her mother.

The district director determined that the applicant's *Application for Waiver of Grounds of Inadmissibility* (Form I-601) submitted with her *Application to Register or Adjust to Lawful Permanent Resident Status* (Form I-485) was not approvable because it provided only general information and did not specify how the applicant had rendered herself inadmissible to the United States. See *Decision of the District Director*, dated June 13, 2006. The district director further concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. See *Decision of Service Center Director*, dated April 13, 2006.

On appeal, counsel states that additional information, including the name provided by the applicant when she was last admitted to the United States and the circumstances of her entry, are being provided with the appeal along with more information on the hardship her mother would suffer if the applicant were removed from the United States. See *Notice of Appeal to the AAO* (Form I-290B). In support of the appeal counsel submitted medical records for the applicant's mother, tax returns and other financial documents for her mother, an affidavit from the applicant, and affidavits from the applicant's mother and siblings. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a twenty-eight year-old native and citizen of Mexico who has resided in the United States since 1994 and last entered the United States in about March 1999 after providing a false name and stating that she intended to visit family members when she in fact intended to resume her residence in the United States. She is therefore inadmissible under section 212(a)(6)(C)(i) for having procured admission to the United States through fraud or misrepresentation of a material fact. The applicant further indicates that she entered the United States without inspection in 1994 and remained until 1998. However, as she did not turn 18 years of age until October 1998, she did not begin accruing unlawful presence until her 18<sup>th</sup> birthday and is therefore not inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more. Her mother is a sixty-seven year-old native and citizen of Mexico and lawful permanent resident. Both the applicant and her mother reside in New Rochelle, New York.

Counsel asserts that the applicant's mother would suffer financial and physical hardship if the applicant were removed from the United States. In support of this assertion counsel submitted an

affidavit from the applicant's mother and letters from her physicians. In her affidavit the applicant's mother states that she relies partially on the applicant for financial support and also for emotional support. See *Affidavit of* [REDACTED] dated July 6, 2006. She further states that she suffers from a medical condition called Arterial System Hypertension and travels to Mexico every six months to visit a physician there because she has no insurance and cannot afford a doctor in New York. *Affidavit of* [REDACTED]. She indicates that she resides with another daughter in New Rochelle, New York and states, "[the applicant] is the principal child of mine to help me in my daily life and I rely heavily on her in all matters, not only the financial ones." She states that the applicant makes sure she takes her heart medication and prepares meals for her every night. *Affidavit of* [REDACTED]. A letter from a physician in Mexico states that the applicant's mother suffers from Arterial System Hypertension and travels to Mexico for periodic visits, but provides no further detail about her condition. The record also contains a copy of a prescription and hand-written progress notes from a physician in Illinois whom the applicant's mother visits when she visits another daughter who lives there.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's mother's condition is so serious that she would suffer extreme hardship if she were to remain in the United States without the applicant. The record contains a brief letter from one physician and a prescription and progress notes, most of which are illegible, from another physician. The physician's letter does not provide any detail about the current condition of the applicant's mother or the exact nature and long-term prognosis of her condition or any treatment or family assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. The AAO further notes that the applicant's mother resides with one daughter and has two sons who reside in New Rochelle, New York as well as another daughter in Illinois. Although the affidavits from the applicant's siblings state that the applicant is primarily responsible for caring for their mother because she does not have any children, the evidence on the record is insufficient to establish that the applicant's siblings would be unable to provide any assistance needed by their mother.

Counsel additionally asserts that the applicant's mother would suffer financial hardship if she remained in the United States without the applicant because the applicant is primarily responsible for supporting her. The applicant's siblings state that they are unable to provide this support, but the record contains no evidence such as income tax returns or other financial documentation, to support the assertion that they are unable to contribute more to support their mother. 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)). Further, even if the departure of the applicant would have a negative impact on her mother's financial situation, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The applicant's mother states that she would suffer mentally and emotionally if the applicant were removed and could not imagine life without her daughter by her side. The evidence does not establish, however, that any emotional hardship the applicant's mother would suffer if the applicant is removed would be more serious than the type of hardship an individual would normally suffer when faced with the prospect of separation from her child. Although the depth of her concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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 emotional, physical, and financial hardship the applicant's mother would suffer if she remained in the United States without the applicant appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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). The applicant made no claim that her mother would experience hardship if she were to relocate with her to Mexico. Therefore, the AAO cannot make a determination of whether she would suffer extreme hardship if she moved to Mexico.

In the present case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen mother as required under section 212(i) of the Act.

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.