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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: MEXICO CITY, MEXICO Date: FEB 05 2009

IN RE: [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.

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, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States 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 enter the United States by fraud or willful misrepresentation. The applicant has a U.S. citizen mother. He is the beneficiary of an approved petition for alien relative and seeks a waiver of inadmissibility in order to reside with his mother in the United States.

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 Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 10, 2006.

On appeal, counsel contends that the district director did not give adequate consideration to the previously submitted evidence of extreme hardship to the applicant's mother. Counsel also asserts that the evidence additionally submitted on appeal should be sufficient to establish extreme hardship to the applicant's mother. *Form I-290B, Notice of Appeal,* dated November 21, 2006.

The record includes, but is not limited to, statements from the applicant's mother, dated January 17, 2006 and November 13, 2006 respectively, and letters from [redacted], a psychologist at Mt. Sinai Medical Center, dated January 17, 2006 and November 6, 2006 respectively. The entire record was reviewed and considered in rendering this decision.

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 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 and the applicant also testified at the time of his interview for an immigrant visa that, in 2002, he used a passport in someone else's name to enter the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212(i).[1]

A section 212(i) waiver of the bar to admission resulting from 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 an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(i) waiver proceedings except to the extent that it results in hardship to a qualifying relative.

The record reflects that the applicant is an unmarried son of a naturalized U.S. citizen. The statement from the applicant's mother and the applicant's Form DS-230 indicate that the applicant's father is living in Canada. Therefore, the applicant's mother is the qualifying family member in this proceeding and the only relevant hardship is the hardship she would suffer if the applicant's waiver application is denied.

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. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals provides a list of factors relevant in determining whether an applicant 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.

> 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). 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).

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[1] In his decision, dated October 10, 2006, the district director indicates that the applicant is also inadmissible under section 212(a)(9)(A) of the Act as an alien expeditiously removed who seeks admission within five years of his removal. However, the AAO notes that as of this date more than five years have passed since the applicant was removed from the United States and he is no longer subject to the ground of inadmissibility under section 212(a)(9)(A)(i) of the Act.

The AAO notes that extreme hardship to the applicant's mother must be established whether she resides in Guyana or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel contends that the applicant's mother would suffer extreme emotional and psychological hardship if she remained in the United States and the applicant's waiver application were denied. Counsel submits statements from the applicant's mother. In her first statement, the applicant's mother states that her son's immigration problems have made her very sick and depressed, and that she would suffer extreme emotional and psychological hardship if her son is not granted the waiver. In her second statement, she asserts that she needs her son for emotional, psychological and financial support because of their long separation, and that her ability to sleep, to think, to function normally has diminished every day that they have been apart, especially since her son's waiver application was denied. She further asserts that she suffers from severe psychological conditions that are exacerbated by her son's absence. The applicant's mother also asserts that she would suffer extreme and extraordinary psychological and economic hardship if her son's waiver is not granted and that her health, even her life, would be jeopardized if the applicant were not allowed to come to the United States.

In support of the applicant's mother's claims of emotional and psychological hardship, counsel submits letters from [redacted], a licensed psychologist at Mt. Sinai Medical Center, dated January 17, 2006 and November 6, 2006 respectively. The psychologist's January 17, 2006 letter states that the applicant's mother has demonstrated the signs of Major Depressive Disorder for the past year, that she frequently cries, is unable to sleep, has had changes in appetite, and has had difficulty concentrating. The psychologist states that the applicant's mother sought and received an evaluation for treatment at The Advanced Center for Psychotherapy – Jamaica Hospital Medical Center in March 2005 and attended several evaluation appointments. The letter opines that the applicant's mother's unremitting depression and sadness, when combined with the stressors of working as a home health aide, make working quite difficult at present and that it will be of much greater benefit to her if her son is able to come to the United States. The November 6, 2006 letter states that the applicant's mother has a long history of Major Depressive Disorder, Recurrent Episode (DSM IV-TR-296.3) and this has been exacerbated since receiving notification that her son's waiver application was denied. The psychologist continues to state that the applicant's mother's ongoing ability to work is significantly limited due to her severe, recurrent major depression, that her psychological condition is rapidly deteriorating, and that her ability to function independently is likely to become compromised unless the current trend is reversed. The psychologist further opines that the immigration of the applicant to the United States would have an extremely beneficial effect on his mother's mental health.

The AAO is mindful of and sensitive to the applicant's concerns about maintaining his family and the hardship that his mother would endure if they remain separated. Having carefully considered the evidence of record, the AAO finds the applicant to have submitted sufficient evidence to

demonstrate that his mother would suffer extreme emotional hardship in the event that his waiver application were denied and she remained in the United States.

However, as previously discussed, extreme hardship to the applicant's mother must be established whether she resides in the United States or Guyana. Even though the applicant has established that his mother would suffer extreme hardship if she remained in the United States, he must also prove that she would suffer extreme hardship if she relocated to Guyana. The AAO notes, however, that the issue of relocation and its impact on the applicant's mother is not addressed in the record. Accordingly, the AAO is unable to determine that relocation to Guyana would result in extreme hardship to the applicant's mother.

In that the applicant has not established that his mother would experience extreme hardship whether she relocates to Guyana or remains in the United States, he has failed to establish eligibility for a waiver under section 212(i) of the Act. He is, therefore, statutorily ineligible for relief and no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.