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

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[redacted]

FILE: [redacted] Office: MIAMI, FL Date: JAN 0 6 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 application was denied by the District Director, Miami, Florida. The AAO dismissed a subsequent appeal and the matter is now before the Administrative Appeals Office (AAO) as a motion to reopen. The motion to reopen will be granted. The AAO's previous decision will be withdrawn. The application will be approved.

The applicant is a native and citizen of Cuba 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 procured entry into the United States by fraud or willful misrepresentation. The applicant is the daughter of a naturalized U.S. citizen and 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 mother.

The AAO concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and dismissed the appeal accordingly. *Decision of the AAO*, dated March 29, 2006.

In the motion to reopen, counsel contends that the applicant's mother would suffer extreme hardship if the applicant's waiver application were denied and submits additional evidence to support his claim. *Motion to reopen*, dated April 24, 2006.

The record includes, but is not limited to, medical and psychological records for the applicant's mother; statements from the applicant's mother; and a statement from the applicant. 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 that on November 22, 2001 the applicant arrived at Miami International Airport without a United States visa. *Immigration and Naturalization Service Inspections Memorandum*,

dated November 22, 2001. The applicant presented a Cuban passport and was paroled into the United States. *Id.* The AAO notes that the record also includes a copy of an Italian passport for the applicant with an expiration date of October 2006. *See passport.* The applicant married an Argentine citizen and on December 13, 2002 filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to the Cuban Adjustment Act of 1966. *Form I-485.* The District Director found that July 21, 2004 interviews with the applicant and her spouse indicated that she had entered into a fraudulent marriage in order to convey a benefit under the Act. *Decision of the District Director*, dated August 6, 2004. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship that would be suffered by the applicant's mother if the applicant is removed. If 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 family ties to 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 AAO notes that extreme hardship to the applicant's mother must be established whether she resides in Cuba or in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request.

If the applicant's mother travels with the applicant to Cuba, the applicant needs to establish that her mother will suffer extreme hardship. The applicant's mother was a citizen of Cuba who became a naturalized United States citizen on June 13, 2006. *Naturalization certificate.* The applicant's mother has no immediate family in Cuba and both of her parents are deceased. *Statement from the applicant's mother*, dated September 7, 2006. She is 76 years old. *Naturalization certificate.* The applicant's mother suffers from Chronic Atrophy of Left Kidney and Obstructive Uropathy and has a history of right and left kidney malfunction. *Statement from* [redacted], dated August 15, 2006; *Discharge Summary,* [redacted], dated January 15, 2007. She also suffers from osteoarthritis, osteoporosis, peripheral neuropathy and chronic lower back pain, antalgic limping and unsteady gait. *Id.* The applicant's mother needs assistance in bathing and dressing and

her risk of falling has increased. *Statement from* , dated August 15, 2006. As a result of her multiple and advanced medical conditions, she has experienced a marked decline in her ability to function. *Id.* The applicant's mother states that she cannot walk without the assistance of a walker. *Statement from the applicant's mother*, dated September 7, 2006. She is also emotionally unstable and requires therapeutic interventions twice a month and a referral to a psychiatrist for continued medication management. *Statement from* , dated February 2, 2008. She carries a diagnosis of Major Depressive Disorder, severe, recurrent with psychotic features. *Statement from* , undated. The applicant's mother can no longer work and needs constant help. *Statement from the applicant's mother*, dated August 31, 2004. Counsel asserts that the applicant's mother would not be able to receive proper medical care in Cuba and would likely be persecuted by the Cuban government. *Motion to reopen*, dated April 24, 2006. The AAO acknowledges the assertions made by counsel, however, it notes that the record fails to include any documentary evidence to support such assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). While counsel has failed to provide evidence to document whether the applicant's mother would be able to receive sufficient medical care in Cuba and whether she would be persecuted in Cuba, the AAO acknowledges the advanced age of the applicant's mother, the medical conditions from which she suffers and the impact that the disruption of long-established medical treatment may have on her health. When looking at the aforementioned factors, particularly her lack of family ties in Cuba, her advanced age, and her physical and mental health conditions, the AAO finds that the applicant has demonstrated that her mother would suffer extreme hardship if she were to reside in Cuba.

If the applicant's mother resides in the United States, the applicant needs to establish that her mother will suffer extreme hardship. The applicant's mother is unmarried and her daughter is her life. *Statement from the applicant's mother*, dated September 7, 2006. Her parents are deceased and she has no contact with her one sister who resides in the United States. *Id.* As previously noted, the applicant's mother suffers from several physical and mental health conditions. *Statement from* , dated August 15, 2006; *Discharge Summary,* dated January 15, 2007; *Psychological evaluation written by* , dated January 23, 2007. She has been diagnosed with Major Depressive Disorder. *Statement from* , undated. Her most recent psychiatric crisis is rooted in her fear of being separated from the applicant, as she is very dependent on the applicant for emotional support and care. *Psychological evaluation*, dated January 23, 2007. She has a history of kidney conditions. *Statement from* dated August 15, 2006; *Discharge Summary,* , dated January 15, 2007. The applicant's mother lives with the applicant due to her multiple health problems. *Statement from the applicant's mother*, dated August 31, 2004. She can no longer work and needs constant help. *Id.* Without the help of the applicant, she could not survive. *Statement from the applicant's mother*, dated September 7, 2006. The applicant takes her mother to visit doctors and to receive the medical attention that her health requires. *Id.*; *Statement from the applicant*, dated August 3, 2004. The applicant's mother needs assistance in bathing and dressing and her risk of falling has increased. *Statement from* dated August 15,

2006. When looking at the aforementioned factors, particularly the advanced age of the applicant's mother, her significant health conditions, and the impact of separating her from her sole caregiver, the AAO finds that the applicant has demonstrated that her mother would suffer extreme hardship if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which she now seeks a waiver.

The favorable and mitigating factors are the applicant's U.S. citizen mother, the extreme hardship to her mother if she were refused admission, her long-term and supportive relationship with her mother and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the AAO's prior decision will be withdrawn and the application approved.

ORDER: The AAO's prior decision is withdrawn. The application is approved.