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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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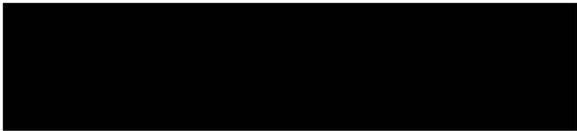
Office: LOS ANGELES, CA

Date: JUL 02 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:



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, 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Syria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). He is the son of a naturalized U.S. citizen and the father of two U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), dated January 21, 2005.

On appeal, counsel asserts that the applicant's mother will suffer extreme hardship based on the cumulative effects of separation and loss of financial support from the applicant.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 indicates that the applicant used the border crossing card of another person in attempting to enter the United States in 1985. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative. Hardship to the applicant or to his children is not relevant under the statute and will be considered only insofar as it results in hardship to his U.S. citizen mother, the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 set forth a list of non-exclusive factors relevant to 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record of proceeding contains the following relevant evidence: a brief from counsel, a statement from the applicant’s mother, birth certificates for the applicant’s sons, a naturalization certificate for the applicant’s mother, and a marriage certificate for the applicant and his spouse. The record also contains tax documentation, medical records for the applicant’s younger son and church records.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal counsel asserts that the applicant’s mother is completely financially and emotionally dependent on her children, including the applicant. She further asserts that the applicant’s mother is intimately involved in the care of the applicant’s younger son who has speech and development problems, that the applicant’s mother would lose her sense of purpose if the applicant were forced to return to Syria and that the applicant’s mother worries daily about the applicant’s lack of family and resources in Syria, as well as the removal of her grandson from the speech pathology program at his school.

The applicant’s mother has submitted a statement and asserts that she and her son are very close, see each other nearly every day, and that he supports her financially and takes care of the maintenance and upkeep of her house. She also states she would be devastated if the applicant were forced to return to Syria, that she would not be able to relocate with him because her past experience makes her fearful of the discrimination she would experience as a Christian, and that she fears Syria would not provide assistance to meet her grandson’s developmental needs.

The record does not contain sufficient documentary evidence to support counsel's assertion that the applicant's mother is dependent on him financially, or that the emotional impact on his mother rises above that normally experienced by the relatives of excluded aliens. The record does include the Form I-864, Affidavit of Support Under Section 213 of the Act, filed by the applicant's mother in support of the immigrant visa petition benefiting him. While the AAO notes that the Form I-864 indicates that the applicant's mother's only income comes from Social Security payments, it is not sufficiently probative to establish her financial dependence on the applicant. The AAO would also note that a second Form I-864 filed in support of the applicant's visa petition was submitted by a third family member residing at the same address as the applicant's mother and that both Form I-864s state that there is a third family member who resides at this same address. The record also indicates that two of the applicant's brothers reside in California. No evidence has been submitted to demonstrate that these several family members are either unable or unwilling to financially provide for the applicant's mother in his absence. Further, the record contains no evidence, e.g., published country conditions reports, to establish that the applicant would be unable obtain employment upon return to Syria and financially assist his mother from outside the United States.

The record also fails to establish that the applicant's mother would suffer extreme emotional hardship if the applicant returned to Syria. Although the AAO acknowledges the emotional loss that the applicant's mother would experience as a result of her separation from her son and grandsons, as well as her concerns that her younger grandson would not be able to continue with his speech therapy, the record contains no documentary evidence that the emotional impact on the applicant's mother rises above that normally experienced by the relatives of excluded aliens.

The record also lacks any documentary evidence that the applicant's son, who is not a qualifying relative in this proceeding, would be unable to receive speech therapy in Syria. 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)). 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 record does not establish that the applicant's mother will suffer extreme hardship if he is excluded and she remains in the United States.

Counsel asserts that the applicant's mother is unwilling and unable to relocate to Syria with the applicant because she fled the country based on persecution she experienced as a Christian. While the applicant's mother also states that she fled Syria as a result of religious discrimination, the record, again, fails to offer supporting evidence, including published country conditions reports indicating that Christians are discriminated against or persecuted in Syria. There is also no evidence that the applicant's mother has any medical condition that would preclude relocation to Syria. The record therefore fails to demonstrate that the applicant's mother would suffer extreme hardship if she relocated to Syria with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not establish extreme hardship to the applicant's U.S. citizen mother under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief, 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(i) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.