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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (SANTO DOMINGO) Date: JUN 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 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 sustained.

The applicant is a native and citizen of the Dominican Republic 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 sought to obtain a visa by fraud or willful misrepresentation of a material fact. The applicant is the daughter of a U.S. Citizen father and mother and is the beneficiary of an approved Petition for Alien Relative filed by her father. The applicant 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 parents.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the District Director* dated May 14, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in denying the wavier application and failed to consider all of the factors giving rise to extreme hardship to the applicant's parents, including their medical condition, age, and inability to travel. Specifically, counsel asserts that the applicant's parents, who are U.S. Citizens and have lived in the United States for over twenty years, suffer from medical conditions that prevent them from traveling and require them to visit their physicians in the United States frequently. *See Brief in Support of Appeal* at 2-3. Counsel states that as a result they have had very little contact with the applicant and her two children except by telephone. *Brief* at 3. Counsel additionally states that all of the applicant's siblings, three brothers and four sisters, have been residing in the United State since 1997 or before and are all Lawful Permanent Residents or U.S. Citizens. *Brief* at 2-3. In support of the waiver application and appeal, counsel submitted letters from the applicant's parents and from their physicians and copies of permanent resident cards and naturalization certificates for the applicant's siblings. The entire record was reviewed and considered in arriving at 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. *Id.* at 566. The BIA has further stated:

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).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (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).

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 (9th 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 (9th 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 *Hassan v. INS*, *supra*, the court further held that the uprooting of family and

separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally 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 forty-two year-old native and citizen of the Dominican Republic who has never resided in the United States. In 1993 she applied for a nonimmigrant visa and submitted a fraudulent marriage certificate and falsely claimed that she was married and wished to travel to the United States for her honeymoon. The applicant's mother is a 71 year-old native of the Dominican Republic and her father is an 81 year-old native of the Dominican Republic. Both are naturalized U.S. Citizens and reside in Lawrence, Massachusetts. The applicant resides in Santiago, Dominican Republic with her two children.

Counsel for the applicant asserts that both of the applicant's parents are suffering extreme hardship due to separation from the applicant and would suffer extreme hardship if they relocated to the Dominican Republic. Counsel further asserts that if the applicant's parents remain in the United States, they will "spend the last years of their lives without the possibility of ever seeing their daughter again but will also lose the opportunity to establish a relationship with their grandchildren whom they hardly know." *Brief at 4*. In support of these assertions, counsel submitted letters from the doctors treating both the applicant's parents as well as a letter from the applicant's father. A letter from [REDACTED] states that the applicant's father, who is now 81 years old, has been under his treatment for over five years for "many serious health concerns, including diabetes and heart disease, as well as vision loss due to the diabetes." *See Letter from [REDACTED] dated June 5, 2007*. [REDACTED] further states that the applicant's father depends on his family members for care and support and cannot travel alone due to his medical conditions, and that the separation from the applicant, who is the only family member who still resides in the Dominican Republic, is very distressing to the applicant's father. The applicant's father states that it is a great loss to their entire family, but especially himself, to be separated from the applicant, and further states, "I am an old man who is going to be 79 years next year and you will understand my years of my life is short." *Letter from [REDACTED] dated April 23, 2007*.

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 letter from the physician treating the applicant's father states that he suffers from serious medical conditions that restrict his ability to travel, and further states that it is causing him distress to be separated from the applicant. The evidence on the record establishes that the applicant's father's medical condition is serious, particularly in light of his advanced age, and that being separated from the applicant while the rest of the family resides near him in the United States is causing significant emotional hardship. The applicant's father fears that he will not see his daughter again, and it appears that he is suffering emotional hardship that, when considered in light of his age and medical condition, rises to the level of extreme hardship.

In his letter the applicant's father further states that he cannot relocate to the Dominican Republic because his health is not good and he requires constant treatment and tests, and that a disruption in

his care could be risky for him. *Letter from* [REDACTED] dated April 23, 2007. He further states that his entire family resides in the United States and his “objective in life is to live together.” *Letter from* [REDACTED] The AAO finds that the applicant’s father, who is 81 years old, has been a Lawful Permanent Resident since 1987, and suffers from various medical conditions that limit his ability to travel, would suffer extreme hardship if the applicant is denied admission to the United States and he relocated to the Dominican Republic. This finding is based largely on evidence of his poor health and advanced age, as well as documentation indicating that the applicant’s seven siblings all reside in the United States and a statement from his physician indicating that family members are responsible for providing needed care and support for the applicant’s father. It appears that relocation to the Dominican Republic would cause emotional and physical hardship for the applicant’s father because he would be separated from his family in the United States and from the doctors who have been providing him care for several years, and because he would have to readjust to conditions in the Dominican Republic after residing in the United States for over twenty years.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien’s bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country’s Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien’s good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant’s immigration violation, attempting to obtain a visa by presenting a fraudulent marriage certificate and misrepresenting her marital status and purpose for traveling to the United States.

The favorable factors in the present case are the hardship to the applicant's father and her other family members in the United States if she remains separated from them, the applicant's lack of a criminal record or additional immigration violations, and her family ties in the United States.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh this adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.