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U. S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: MIAMI (WEST PALM BEACH) Date: SEP 01 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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

The applicant, a native and citizen of Jamaica, was found 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 to the United States by fraud and/or willful misrepresentation, and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought waivers of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i), and 212(h) of the Act, 8 U.S.C. § 1182(h), in order to be able to reside in the United States with her U.S. citizen mother and children, born in 1993 and 1994.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 23, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated December 20, 2006, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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.

. . . .

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General (Secretary) that -
  - (i) . . . the activities for which the alien is inadmissible . . . occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
  - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
  - (iii) the alien has been rehabilitated; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Regarding the district director's finding that the applicant was inadmissible under Section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation, the record establishes that the applicant procured entry to the United States in 1987 by presenting a passport and visa belonging to

another individual. The district director correctly found the applicant to be inadmissible to the United States under section 212(a)(6)(C) of the Act, for having procured entry to the United States by fraud and/or willful misrepresentation. On appeal, the applicant does not contest this finding of inadmissibility.

The record also establishes that the applicant was convicted of Theft by Deception, in violation of section 2C:20-4 of the New Jersey Statutes Annotated, based on a December 1993 arrest; no prison sentence was imposed. The AAO has reviewed the statute, case law and other documents related to this conviction, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concurs with the district director that the applicant has been convicted of a crime involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act. On appeal, the applicant does not contest this finding of inadmissibility.

The AAO has determined that the applicant's fraud and/or willful misrepresentation when procuring entry to the United States, as discussed above, automatically renders her inadmissible under section 212(a)(6)(C) of the Act. The applicant is eligible to apply for a section 212(i) waiver.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's parent, a U.S. citizen, is the only qualifying relative for purposes of a 212(i) waiver, and hardship to the applicant and/or her children cannot be considered, except as it may affect the applicant's mother.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant's U.S. citizen mother asserts that she will suffer extreme emotional and physical hardship were she to reside in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration she states that she would suffer extreme emotional hardship due to the long and close relationship she has with the applicant. She also asserts that she would suffer extreme emotional hardship were she to be separated from her grandchildren in the event they relocated abroad to reside with the applicant, as she has a close relationship with them. Alternatively, were her grandchildren to remain in the United States with her while the applicant relocates abroad, she would have to care for them, which would cause her extreme hardship. Finally, the applicant's mother notes that she will suffer extreme physical hardship were the applicant to reside abroad, as she suffers from diabetes and high blood pressure, and thus needs the applicant to care for her, including taking her to medical appointments, cooking dinner, ensuring that she takes her medications regularly, and doing her grocery shopping. *Affidavit of* [REDACTED] dated November 17, 2006.

It has not been established that the applicant's U.S. citizen mother would suffer extreme hardship were the applicant to relocate abroad due to her inadmissibility. To begin, the record establishes that the applicant's mother is married; it has not been established that her husband would be unable to provide the support she may need due to her daughter's physical absence. In addition, the AAO notes that the letter provided from the applicant's mother's treating physician confirms that the applicant's mother has diabetes and hypertension, but makes no reference to the severity of the situation, the short and long-term treatment plan, and the critical nature of the applicant's presence to her mother's health. *Letter from* [REDACTED] dated November 13, 2006. Moreover, it has not been established that the applicant's mother would be unable to travel to Jamaica, her home country, to visit the applicant. 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)). Finally, the applicant's mother's claims to physical hardship are diminished by the fact that she has been able to maintain long-term, full-time employment as a Licensed Nursing Assistant/Home Health Aide. *Letter from* [REDACTED] dated June 21, 2006.

The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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.

*Hassan v. INS, supra*, held further 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. While the AAO recognizes that the applicant's mother may need to make alternate arrangements with respect to her own care due to the applicant's inadmissibility, it has not been established that such arrangements would cause her extreme hardship. As such, the record fails to establish that the applicant's mother's continued care and survival directly correlate to the applicant's physical presence in the United

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. This criteria has not been addressed with respect to the applicant's U.S. citizen mother. As such, it has not been established that the applicant's mother would suffer extreme hardship were she to relocate to Jamaica, her home country, to reside with the applicant due to her inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a child is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether the applicant is eligible for a waiver under section 212(h) of the Act and/or whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.<sup>1</sup>

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<sup>1</sup> The AAO notes counsel's assertions that the matter be remanded to the director to adjudicate her apparently simultaneously filed motion. It is unclear whether the fee for the motion was ultimately accepted by the director, therefore, the record as it presently exists contains only the appeal to the AAO. The AAO finds no reason to remand the matter as all issues noted in the motion have been examined in the appellate decision.