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U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: Office: SAN FRANCISCO (SAN JOSE) Date: SEP 21 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).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, , is a native of Cambodia and a citizen of Canada. He was found by the District Director to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. §1182(i), in order to return to the United States to join his U.S. lawful permanent resident mother,

The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his U.S. lawful permanent resident mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant qualifies for the waiver because his lawful permanent resident mother will clearly suffer extreme hardship if he is refused admission to the United States. As corroborating evidence, counsel furnished declarations from family members, a psychological evaluation, medical letters, family photographs, financial documentation, and documentation related to cemetery interment rights. The entire record was reviewed and considered in rendering a 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 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 director found the applicant inadmissible under section 212(a)(6)(C) of the Act for seeking admission to the United States in February 1997 by concealing his true intention of travel to the United States. The record reflects that on February 11, 1997, the applicant attempted to enter the United States from Canada, as a visitor, at the Champlain, New York port-of-entry. During

secondary inspection, the applicant admitted that he was residing and employed in California. Accordingly, the record supports the director's finding that the applicant misrepresented his intentions when he applied for admission to the United States as a temporary visitor. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act. The applicant has not disputed his inadmissibility on appeal.

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, *i.e.,* the United States citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. In the present case, the applicant's mother is a qualifying family member for section 212(i) of the Act extreme hardship purposes. 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, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

This matter arises in the San Francisco District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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 Board of Immigration Appeals (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). Separation of family will therefore be given the appropriate weight under Ninth Circuit case law in the assessment of hardship factors in the present case.

The AAO notes further, however, that U.S. court decisions have repeatedly 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she 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 contains a psychological evaluation of the applicant's mother, which was conducted on May 3, 2007 by , Senior Staff Psychologist at the Center for Survivors of Torture, San Jose, California. diagnosed the applicant's mother with Posttraumatic Stress Disorder, Chronic; Major Depressive Disorder, Recurrent, Severe, Without Psychotic Features; Dysthymic Disorder, Early Onset; Panic Disorder; and Pain Disorder, Chronic, Associated with Both Psychological Factors and a General Medical Condition. states in her evaluation that in 1975 the applicant's mother was tortured severely by the Khmer Rouge. states that the applicant's mother's father, daughter and distant relatives were killed during the genocide. Dr. states that the applicant's mother, a widower, has thirteen children. She notes that ten of the children live in Canada, and two of the children, including the applicant, live in California. She states that the applicant's mother, who resides with the applicant in California, was adamant that the applicant is the only child she feels truly connected with because her other children do not support her emotionally or financially. She states that the applicant's mother's Posttraumatic Stress Disorder is exacerbated by the fear of having the applicant removed from her. notes that as a trauma survivor, the applicant's mother finds it difficult to let others get close to her, self-isolates, and detaches. She states that the current threat of the applicant being removed further complicates and greatly exacerbates the applicant's mother's depressive episodes. states that the applicant is the only attachment his mother has and he is the one necessary for her practical well-being and emotional security. states that in her professional opinion, it would be extremely detrimental psychologically to separate the applicant from his mother.

The record contains a letter from , outpatient psychiatrist working as a consultant for the Center for Survivors of Torture in San Jose. states in his letter, dated July 6, 2007, that he has been treating the applicant's mother for severe depression and post traumatic stress disorder for four months. He states that the applicant's mother receives regular therapy through the clinic and he is treating her with a combination of Zoloft, an antidepressant for mood, and Abilify, an antipsychotic medication, for intrusive flashbacks.

The record demonstrates that the applicant's mother would suffer extreme hardship in the form of extreme psychological distress if she were separated from the applicant. The suffering experienced by the applicant's mother would surpass the hardship typically encountered in instances of separation because of her status as a trauma survivor of genocide who has been diagnosed with Posttraumatic Stress Disorder, Chronic; Major Depressive Disorder, Recurrent, Severe, Without Psychotic Features; Dysthymic Disorder, Early Onset; Panic Disorder; and Pain Disorder, Chronic, Associated with Both Psychological Factors and a General Medical Condition. evaluation demonstrates that the applicant is the sole caretaker of his mother, and the only individual she trusts and relies on for financial support and her emotional well-being. The AAO therefore finds that the applicant has established that his mother would suffer extreme hardship if they were separated due to his inadmissibility.

Extreme hardship to the applicant's mother must also be established in the event that she accompanies the applicant to Canada. On appeal, counsel asserts that the applicant's ability to provide for his mother stems from his successful retail donut business. Counsel states that the vitality of this business is very much dependent upon the applicant's personal day-to-day management, and he could not possibly run it from Canada. Counsel states that the applicant could not set up a comparable business in Canada. He states that the applicant had tried to do this in 1990 and it failed miserably.

The AAO finds that counsel's assertions are based on unsubstantiated speculation alone. Counsel has failed to provide country condition reports on the Canadian economy, evidence that the applicant would be unable to find employment or operate a business in Canada, or any other documentation to support his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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). Furthermore, the AAO notes that a reduction in standard of living does not, alone, rise to the level of extreme hardship. U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.").

The applicant's mother, a citizen of Canada, states in her declaration that she resided in Canada from 1980 until 2002. She states that she moved to the United States in 2002 after her husband passed away because she missed the applicant and the extremely cold weather in Canada negatively affected her health. She states that she had difficulty walking because her joints would become stiff and painful and she had difficulty breathing. The record contains a medical letter, dated March 19, 2007, from family practice physician , which states that the applicant's mother has chronic lower back pain, hypothyroidism, asthma, and possible depression. states that the

applicant's mother's main problem is lower back pain, and she will need a work-up to elicit the cause of her back pain. indicates that because of the back pain the applicant's mother is having problems doing her activities of daily living and needs someone to help take care of her.

The AAO has reviewed letter and finds that it fails to demonstrate that the applicant's mother has a medical condition that would cause her extreme hardship if she accompanied the applicant to Canada. letter fails to indicate that the applicant's mother's medical conditions are a result of cold weather or other climate conditions in Canada. Therefore, the assertions that the applicant's mother cannot reside in Canada because of the implications on her health are based on speculation, and not corroborated by any evidence. 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)). Although the applicant's mother's unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

Finally, the applicant's mother states that if she moved to Canada, she does not know when she would able to visit her sister who resides in Sunnyvale, California or her husband's and mother's grave sites, which are located in San Jose, California. The AAO acknowledges that the applicant's mother would suffer emotional hardship as a result of separation from her family in the United States. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship. The AAO notes that United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. The Ninth Circuit Court of Appeals in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's mother, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under sections 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 establishing that the application merits approval remains entirely 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.