U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LONDON Date: JAN 09 2008

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), London, United Kingdom, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Iran and citizen of the Denmark. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen mother.

The applicant was admitted into the United States under the visa waiver program on July 13, 2000 and was granted an authorized period of stay until October 11, 2000. The applicant remained in the United States beyond the period of authorized stay until he was removed on January 4, 2003. On May 17, 1999, the applicant's mother, a naturalized U.S. citizen, filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on September 6, 2000. The applicant is now seeking an immigrant visa to the United States.

The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated January 23, 2006.

On appeal, counsel asserts that the OIC either failed to consider, or considered and incorrectly applied, the standard for the exercise of discretion regarding extreme hardship. Counsel contends that the OIC incorrectly determined that the applicant's presence in the United States would not alleviate his mother's medical condition. Counsel observes that physicians have opined that the applicant's mother would experience less anxiety if the applicant were present and would benefit from his assistance in taking her frequent medical appointments. He also notes that the applicant's mother's dermatologist indicates that a "stabilized family environment" would be of great benefit to the applicant's mother in her treatment for skin cancer. Counsel asserts that the OIC also erred in determining that there had been no showing that the applicant's presence in the United States would alleviate financial hardship experienced by his mother. Counsel notes that the applicant has submitted letter from prospective employers, which shows his "employability" even if these employers are in California rather than Ohio, the state in which the applicant's mother currently resides.

Counsel also contends that balancing of the applicant's infraction with the benefits of his admission clearly indicates that the waiver should be granted. Counsel asserts that the OIC erred in considering as a factor the notion that the applicant's mother could relieve her hardship by relocating to Denmark. Finally, counsel maintains that Executive Order No. 12,606 mandates that family unity and autonomy be favored in the adjudication of a waiver application.

The record contains a declaration by the applicant; affidavits from the applicant's mother and sister; a letter from [redacted], the applicant's mother's physician; a letter from [redacted], a cardiologist that has treated the applicant's mother; a letter from [redacted] a dermatologist that has treated the applicant's mother; and letters from representatives of Global 61, PassKey Management

Company, Meiners Oaks Elementary School and Warner Brothers Studios. The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who – . . .
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> **(II)** Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The applicant was admitted into the United States under the visa waiver program on July 13, 2000 and was granted an authorized period of stay until October 11, 2000. The applicant remained in the United States beyond the period of authorized stay until he was removed on January 4, 2003. He is now seeking re-admission. Therefore, the applicant was unlawfully present from October 12, 2000 until January 4, 2003, a period in excess of one year. The applicant has not disputed that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his siblings is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen mother is the only qualifying relative. Contrary to the assertions of counsel, the Secretary assesses whether an exercise of discretion is warranted only if the applicant first establishes extreme hardship to a qualifying relative. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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).

U.S. courts have 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); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in the assessment of hardship factors in the present case.

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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother faces extreme hardship the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's mother would benefit from having her son return to the United States, but she has not submitted sufficient evidence showing that his absence has resulted or will result in extreme hardship. As observed in the OIC's decision, the applicant has submitted contradictory evidence concerning his intentions to assist his mother if he returns to the United States. Counsel states on appeal that the applicant intends initially to live in California, where he has offers of employment, but also contends that the applicant will assist his mother in attending her medical appointments in Ohio and alleviating the hardship she experiences as a consequence of her medical ailments.

Regardless, although the letters from prospective employers demonstrate a likelihood that the applicant will find employment in the United States, and therefore be able to provide (possibly) financial support to his mother, they do not demonstrate that the applicant's mother experiences hardship without the applicant's support or that he is unable to render financial assistance from Denmark, where he is a citizen. The applicant's mother provides a brief explanation of her financial affairs in her affidavit, but submits no other

evidence, such as financial or tax records, to support the contention that she experiences financial hardship. Although the statements made by the applicant's mother are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Likewise, the applicant has failed to submit any evidence relating to his financial affairs in Denmark, where he has lived since 1984.

The AAO recognizes that the applicant's mother suffers emotionally as a result of separation from the applicant. The AAO notes that the applicant has submitted letters from medical doctors detailing his mother's physical ailments and opining as to her mental health. Although the input of any health professional is respected and valuable, the AAO observes that these doctors are not mental health professionals. The AAO recognizes that the applicant's son might be able to render assistance to his mother if he is admitted to the United States, but the evidence submitted by the applicant lacks sufficient probative value and contains insufficient detail concerning the impact his absence has or will have on her mental health. Furthermore, in light of the discrepancies in the evidence concerning the applicant's intention to care for his mother if he is allowed to return to the United States, the evidence in the record is insufficient to demonstrate that the hardship experienced by the applicant's mother in his absence constitutes extreme hardship.

The applicant has not demonstrated that this hardship in an atypical consequence of removal or inadmissibility, and it 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 or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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.

Finally, although counsel asserts that the applicant's mother's "exile" to Denmark would created hardship for an elderly woman that has become accustomed to her life in the United States, the AAO notes that the applicant has not submitted specific evidence to support this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 extreme hardship to his U.S. citizen mother as required under section 212(a)(9)(B)(v) 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(a)(9)(B)(v) 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.