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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: JAN 07 2010

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, 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 Guyana who attempted to procure a nonimmigrant visa with fraudulent documentation to enter the United States. The applicant 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). She is the daughter of a naturalized U.S. citizen. 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 Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), July 1, 2007.

On appeal, counsel for the applicant asserts that the applicant's mother will suffer extreme hardship if the applicant is removed and submits additional evidence.

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 false documentation in attempting to obtain a visa to enter the United States in 1999. Accordingly, 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, in this case the United States citizen mother of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates 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 of proceeding contains, but is not limited to: statements from the applicant's mother; a statement from M.D., Cancer Center, Montefiore Medical Center; a statement from Tyr , M.D., Department of Surgery, The University Hospital for the Albert Einstein College of Medicine, Montefiore Medical Center; a statement from M.D.; a statement from , Ph.D., didn't find birth certificates for applicant's children so deleted reference to them); tax and employment documentation for the applicant's brother and mother; and a copy of a marriage certificate for the applicant and her spouse.

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

The applicant's mother has submitted several statements asserting that she depends on her daughter emotionally, psychologically and financially due to several medical conditions from which she suffers. The record contains different statements from various doctors indicating that the applicant's mother suffers from Hypertension and has recently been diagnosed with rectal cancer. She has also recently undergone surgery related to her cancer diagnosis. Recent statements describe the applicant's mother's debilitated physical condition and describe the need for daily assistance in order to meet her physical and medical needs. The letter from Dr. , a psychologist, indicates that the applicant's mother suffers from memory loss and general cognitive decline. Several of the letters indicate that the applicant's physical support for the caretaking of her mother is crucial, and that the applicant's mother's condition would be adversely affected if the

applicant were removed. The record does not contain any evidence that the applicant provides financial support for her mother. Instead, based on submitted tax returns, it indicates that the applicant's mother receives financial support from the applicant's brother and his wife. Nonetheless, the AAO finds the evidence indicating that the applicant's mother suffers from several serious medical conditions and depends on the applicant physically for her medical needs to be persuasive. It, therefore, finds the record to demonstrate that the applicant's mother would suffer extreme hardship if the applicant were to be removed and she continued to reside in the United States.

A determination of extreme hardship also requires a consideration of the impacts of relocation on the applicant's qualifying relative. Although the record indicates that the applicant's mother would experience extreme hardship upon separation from the applicant, it fails to articulate any impacts that the applicant's mother would experience if she relocated with the applicant to Guyana. Thus, as the record is currently constituted, it does not support a finding that the applicant's mother would experience extreme hardship if she relocated with the applicant.

The AAO notes that the applicant's mother states that the applicant has a United States citizen son who was born in 2004, that she could not care for him in the applicant's absence and that he would suffer emotional pain without his mother. She also asserts that Guyana is a terrible and dangerous place and she would not want her grandson to live there. As previously noted, hardship to an applicant's child is not directly relevant to a determination of extreme hardship and the record does not establish, through documentary evidence, how any hardship to the applicant's child would affect his grandmother, the only qualifying relative. Moreover, the record does not include documentation that demonstrates that the applicant is the mother of a United States citizen child.

The record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's mother would face extreme hardship if she is removed. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.