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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAR 10 2010

IN RE: Applicant: [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:

SELF-REPRESENTED

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 Rhumway

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, [redacted], is a native of Peru and citizen of Canada and Peru who was found 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 admission into the United States by fraud or willful misrepresentation. The applicant is the daughter of [redacted], a lawful permanent resident of the United States. She sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The OIC concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. Decision *of the OIC, dated March 26, 2007.* The applicant submitted a timely appeal.

On appeal, the applicant submits a medical report, a school report, a psychological report, a physician's letter, and other documentation to prove extreme hardship to the applicant's mother.

The AAO will first address the finding of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

The record shows that in 1992 the applicant gained admission at the Miami, Florida airport using a photo-switched passport. In view of her misrepresentation of a material fact, her identity and eligibility for admission to the United States, in order to gain admission into the United States, the AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and will be considered only to the

extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident mother. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Extreme hardship to the applicant's mother must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins the applicant to live in Canada or Peru. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to the hardship experienced by the applicant's mother if she were to remain in the United States without the applicant, the psychological evaluation by [redacted] dated April 11, 2007, conveys that the applicant's mother has three grown children: [redacted] who is 41 years old, the applicant, who is 39 years old, and [redacted] who is 37 years old. The applicant's mother lives with [redacted] and [redacted] and her grandsons: [redacted], who is 18 years old and is [redacted]'s son; [redacted], who is 11 years old and is the applicant's son, and [redacted] 5 year-old son who has Down's syndrome. The applicant's mother states that she does not drive and needs the applicant's help for appointments. She also states that she is preoccupied about [redacted] and would have more peace if [redacted] had his mother. [redacted] conveys that the applicant's sister does the household chores and, given her son's disability, is overwhelmed with her mother's medical conditions and need for follow up, and with caring for [redacted].

The health problems of the applicant's mother are described in the letter dated April 11, 2007 by [redacted], in which he conveys that the applicant's mother has a history of breast cancer,

osteoporosis, peripheral vascular disease and depression. He states that it is important that the applicant live in the United States to assist her mother with her medical care.

[redacted] states in her evaluation of [redacted] that [redacted] was about one year old when he moved to Canada in 1997 with the applicant. His primary language in Canada was French. [redacted] arrived in the United States from Canada in June 2006 and is under the care of his grandmother. [redacted] conveys that [redacted] is in the fourth grade and struggles with academics and language, and has a depressed mood that is related to separation from his mother. He is being evaluated by the Broward County Public School system due to marked academic difficulties.

The psychosocial assessment report by the School Board of Broward County, Florida contained in the record states, in part, that [redacted] is struggling in reading, writing, and math; is respectful toward his aunt; misses his mother; and is a happy child.

Although the record reflects that the applicant's mother has health problems and depression, it fails to demonstrate that the applicant's mother requires the assistance of the applicant in view of the fact that the applicant's brother, sister, and nephew live with her and, therefore, are available to take her to doctor's appointments and assist in her care.

The applicant's mother is concerned about separation from the applicant and the effect of separation on [redacted]. Family separation must be considered in determining hardship. See, e.g., Salcido-Salcido v. INS, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Perez v. INS,* 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991).

In this case, the record reflects that [redacted] is living in the United States because he chooses to live here rather than in Canada, where he lived for nine years with his mother and sister. Although the psychosocial assessment report conveys that [redacted] is struggling academically, and "feels sad when he thinks about his mom in another country," he is said to be a "content, happy child" in the report; and the report conveys that [redacted]s aunt "is very involved, supportive, and dedicated" in caring for him.

After careful consideration of the evidence in the record, the AAO finds that the situation of the applicant's mother, if she remains in the United States without the applicant, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO conveys that the emotional hardship to be endured by the

applicant's mother, as a result of separation from her daughter, is a heavy burden, but it is not unusual or beyond that which is normally to be expected upon removal from the United States. *See Hassan* and *Perez, supra*.

There is no claim made of extreme hardship to the applicant's mother if she were to join the applicant to live in Canada or Peru.

In considering all of the hardship factors presented, both individually and in the aggregate, the AAO finds they fail to demonstrate that the applicant's mother would experience extreme hardship if she were to remain in the United States without her daughter, and if she were to join her to live in Canada.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.