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

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 11 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:

[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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted], is a native of Iraq and a lawful permanent resident of Canada 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 son of a naturalized citizen of the United States. He sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his 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 Director, dated March 28, 2007.* The applicant submitted a timely appeal.

In the letter submitted on appeal, the applicant contends that his 74-year-old mother cannot take care of herself and needs his wife to take care of her. He declares that his mother has health problems that make it hard for her to perform daily activities, and he states that she recently fell and broke her arm. He maintains that his four sisters and brother in the United States work full time and are unable to take care of their mother. He states that his mother alternates living with his siblings in order to enable them to help her. He contends that she needs permanent full-time care, and he avers that his mother's health problems will worsen over time.

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.

USCIS records reflect that on October 28, 2002, an immigration officer refused the applicant admission into the United States because the applicant misrepresented his intent in coming to the United States. Although the applicant claimed to seek admission to the United States to visit his family members, the immigration officer determined that the applicant's true intent in seeking admission to the United States was to continue living and working illegally in Sterling Heights, Michigan. The immigration officer reached that conclusion because the applicant possessed a U.S. driver's license and his van had Michigan license plates.

In the affidavit submitted on appeal, the applicant claims that he is not inadmissible to the United States. He states that in 2002 when he went to visit his family in Sterling Heights, Michigan, he was pulled over by a police officer and asked for identification. He claims that the police officer took his wallet and driver's license and erroneously assumed that he was illegally in the United States because he possessed a U.S. driver's license. He was taken to the U.S. Citizenship and Immigration Services (USCIS) office in Detroit, Michigan. The applicant contends that he permanently resided in Canada and regularly crossed the border to visit his family in Sterling Heights and had no reason to live or work in the United States without authorization. He states that in response to the question of why he possessed a U.S. driver's license, he indicated that it was easier to obtain a driver's license

in Michigan than in Ontario, Canada, and that he could transfer a U.S. driver's license to obtain a Canadian license. The applicant states that he obtained the U.S. driver's license in 1997, while he lived in Canada, that he believed that he was required to wait two years before transferring the license, and that he never transferred the license because he could use it in Canada. The applicant assets that he had informed the immigration officer that he had never lived or worked in the United States. The applicant states that he was deported from the United States. In support of his claim that he never lived or worked in the United States, the applicant submits wage statements, tenant cash receipts, direct deposit statements, and confirmation of registration for English classes.

USCIS records reflect that on October 28, 2002, an immigration officer determined that the applicant was living and working illegally in Sterling Heights, Michigan. He was found to have a Michigan driver's license and a van with Michigan license plates, and was returned to Canada. Although the applicant submitted wage statements and tenant cash receipts to show that he lived and worked in Canada, we note that the wage statements do not cover the year 2002. The direct deposits made by the Corporation of the City of Windsor Ontario into the applicant's account in 2001 and 2002 are shown as mailed to him to Windsor, Ontario. However, direct deposits into an account are not sufficient to establish that the applicant lived in Canada as he would have had access to the account from the United States; and furthermore, his wife and adult children may have had access to the account if they lived in Canada. We note that the applicant does not explain the nature of the direct deposits or his relationship with the corporation. Although the tenant cash receipts are made out to the applicant, that fact is not sufficient to demonstrate that the applicant lived in Canada in 2002 as his wife or adult children may have made the rental payments on his behalf. Lastly, registration for English classes in 2007 does not establish that the applicant did not live or work in the United States in 2002. The applicant has not sufficiently explained his possession of a Michigan driver's license for several years or his vehicle having Michigan license plates. The AAO finds that the record establishes that the applicant sought to gain admission into the United States on October 28, 2002, by misrepresenting the material fact of living in the United States without authorization and his eligibility for admission. Thus, we find the applicant is 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

naturalized citizen 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 will consider all of the evidence in the record.

Extreme hardship to the applicant's qualifying relative 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. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant contends that his mother has health problems and needs his wife to take care of her. The letter by [redacted] dated April 17, 2007, states that the applicant's mother has non-insulin dependent diabetes mellitus, hypertension, allergies, headaches, hyperlipidemia, arthritis with severe back pain, lumbar stenosis and gait difficulty, urine incontinence, and coronary artery disease. [redacted] states that the applicant's mother takes medication and needs assistance with activities of daily living. The applicant's mother in a letter dated January 27, 2006, contends that her daughter-in-law, with whom she has a close relationship, helped her in the past and can help her now. She states that she had a faint heart attack because of the stress associated with separation from the applicant, and that she has been in and out of hospitals.

Family separation must be considered in determining hardship. *See 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). *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 removal 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).

The record does indicate that the applicant's mother has health problems for which she requires some assistance during the day. The applicant conveys that he has four sisters and a brother living in the United States and that their mother lives with each of his siblings for a period of time. He asserts that his mother requires full-time care and that his siblings are unable or unwilling to take care of her because of they are employed. We find, however, that the applicant has not demonstrated that his siblings are unable to employ someone to take care of their mother during the day. While the AAO acknowledges that the applicant's mother will experience emotional hardship on account of separation from her son and his family, we find that the applicant had not fully demonstrated that the hardship that his mother will experience as a result of separation will be "unusual or beyond that which would normally be expected" upon an applicant's bar to admission to the United States.

The hardship factors asserted in this case are that the applicant's mother's health problems and need to have her sister-in-law assist her, and the emotional hardship of separation from her son and his family. However, even though the applicant's mother has health problems and requires some assistance with her daily functions, the applicant has not demonstrated that his family members are unable or unwilling to employ a caregiver to assist their mother during the day. While the AAO recognizes that the applicant's mother will experience emotional hardship as a result of separation from her son and his family, the applicant has not fully established that his mother's hardship will be "unusual or beyond that which would normally be expected" upon his bar to admission. When the combination of hardship factors is considered in the aggregate, they fail to establish extreme hardship to the applicant's mother if she remained in the United States without him.

There is no claim made of extreme hardship to the applicant's mother if she joined him 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).

Because the applicant is statutorily ineligible for relief, no purpose is 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 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.