U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

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FILE: Office: SAN FRANCISCO, CA Date:

IN RE:

PETITION: 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 PETITIONER:

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, Director
Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa for admission into the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her mother, a naturalized United States citizen. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her mother and U.S. citizen daughter.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the District Director, dated August 2, 2001.

On appeal, counsel contends that the Immigration and Naturalization Service [Citizenship and Immigration Services] abused its discretion in denying the waiver by failing to consider all factors relevant to the extreme hardship determination, distorting the basis of the case and failing to consider any of the evidence in a probing, rational or cumulative manner. *See* Form I-290B, undated.

In support of these assertions, counsel submits a brief; a supplemental declaration of the applicant's mother; letters of support from the applicant's two brothers; copies of the permanent resident cards issued to the applicant's two brothers; two certifications from a physician treating the applicant's mother; a synopsis describing Meniere's Syndrome; documentation describing Medicare benefits requirements; additional letters of support; a letter from the church where the applicant's mother is a member and copies of several articles and documents addressing country conditions in the Philippines. The record also contains a copy of the naturalization certificate of the applicant's mother; a copy of the birth certificate of the applicant; a copy of an affidavit of the applicant's mother; a copy of the certificate of baptism of the applicant; copies of school records for the applicant; copies of family photographs; a psychological evaluation for the applicant's mother; a declaration of the applicant, dated June 5, 2001; a copy of the birth certificate of the applicant's daughter; a copy of the photograph page of the Philippine passport issued to the applicant; verification of the employment of the applicant's mother and brothers and copies of tax and financial documentation for the applicant, her mother and her brothers. 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 record reflects that the applicant obtained a visitor visa by willfully misrepresenting herself. On or about July 18, 1992, the applicant used the fraudulently obtained visa to enter the United States.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's mother. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's mother would experience extreme hardship if she relocated to the Philippines in order to remain with the applicant. In support of this contention, counsel points to the fact that the applicant's mother has limited family ties in the Philippines and all of her closest family members, namely her children and grandchildren, reside in the United States with her. *See* Appellant's Brief in Support of Appeal from Denial of I-601 Application for Waiver of Inadmissibility and Request to Reconsider Denial Before Forwarding to AAU Based on This Brief and New Evidence Submitted in Appendix to Brief, dated August 31, 2001 at 26. Counsel further provides copies of several articles and reports addressing country conditions in the Philippines to evidence the adversity that would confront the applicant's mother there. Counsel states that violence against women continues to be a major issue in the Philippines including trafficking in women and children for forced prostitution and labor. *Id.* at 19. Although counsel highlights problems with educational opportunities in the Philippines compared to the United States, the AAO notes that hardship to the applicant's daughter is irrelevant to waiver proceedings under section 212(i) of the Act and is only considered to the extent that it impacts the hardship suffered by the applicant's mother.

Counsel also notes that the applicant's mother would be unable to utilize the Medicare benefits to which she is entitled if she relocates outside of the United States. *See* Social Security Administration webpage, dated August 16, 2001. The record establishes that the applicant's mother suffers from arthritis, vertigo and high blood pressure. She has also been diagnosed with Meniere's Syndrome, a disorder of the inner ear which may cause hearing loss, dizziness, nausea and vomiting. *See* Statements of [redacted] MD, dated August 23, 2001 and Synopsis of Meniere's Disease from adam.com, dated August 31, 2001. The applicant's mother

indicates that the cost and quality of health care in the Philippines concern her greatly. *See* Declaration of Narcisa Felipe, dated June 5, 2001.

On the other hand, counsel does not establish extreme hardship to the applicant's mother if she remains in the United States in order to maintain her access to quality healthcare, avoid the human rights abuses and unstable country conditions prevalent in the Philippines and reside with and near the majority of her children and grandchildren. As a naturalized U.S. citizen, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel submits a psychological evaluation for the applicant's mother to support the assertion that she will suffer emotionally as a result of separation from the applicant. The evaluating psychologist concludes that if the applicant's mother were forced to endure a separation in the family, it would "severely compromise her sense of efficacy as a mother and as a person. As such, a separation of this kind would constitute an extreme hardship to her." *See* Psychological Evaluation undated. The AAO notes that the record does not demonstrate an ongoing relationship between the evaluating psychologist and the applicant's mother. Further, the record does not indicate a course of treatment and/or medication prescribed to the applicant's mother to treat her anxiety. While the AAO acknowledges that the applicant's mother shares a special bond with the applicant, the findings of the psychological evaluation do not warrant a finding of extreme hardship based on the psychologist's findings.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS, supra*, held further 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. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parent caused by the applicant's inadmissibility to the United States. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.