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U.S. Citizenship
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Services

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FEB 22 2005

FILE:

Office: LOS ANGELES, CALIFORNIA

Date:

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

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, Los Angeles, 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 § 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 admission into the United States by fraud or willful misrepresentation in January 1987, when she entered the United States using a passport in an assumed name. The applicant is the beneficiary of an approved Petition for Prospective Immigrant Employee, Form I-140. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The district director also denied the application for lack of prosecution, on the grounds that the applicant had failed to submit a requested updated hardship statement from her mother, although she was granted several extensions of time in which to submit additional documentation. The record indicates, however, that in 2003 the applicant submitted statements from her mother, sisters, and cousin in response to requests for evidence from Citizenship and Immigration Services (CIS). The AAO thus concludes that the district director improperly denied the application for lack of prosecution, but concurs with the remainder of the district director's decision, which is based on the evidence on the record.

On appeal, counsel asserts that CIS improperly evaluated the hardship factors that affect the applicant's lawful permanent resident (LPR) mother. Counsel maintains that the applicant's mother is physically, emotionally, and financially dependent on the applicant, such that the applicant's departure would cause her extreme hardship whether she chooses to remain in the United States or return to her native Philippines. In support of her assertions, counsel submits copies of two statements from each of the applicant's sisters in the United States, an affidavit authored by the applicant's mother on February 5, 2004, and a January 16, 2004 public announcement issued by the U.S. Department of State regarding travel to the Philippines.

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.

Section 212(i) of the Act provides 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, she must demonstrate extreme hardship to her LPR mother. Congress specifically did not include hardship to an alien herself as a factor to be considered in assessing extreme hardship; therefore, hardship to the applicant herself will not be considered in this decision.

The AAO notes that laws in recent years have limited rather than extended the relief available to aliens who have committed fraud or misrepresentation. In addition to significant amendments made to the Act in 1996, by the Illegal Immigration Reform and Immigrant Responsibility Act ("IRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as § 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). Moreover, the Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act. In 1990, § 274C of the Act, 8 U.S.C. § 1324c, was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act." Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including "impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name". See 18 U.S.C. § 1546.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals ("Board") outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in § 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

Counsel asserts that although the applicant's mother is a native of the Philippines, she has resided in the U.S. for many years, and her two other daughters reside in the United States and are U.S. citizens. Counsel indicates that the applicant's mother would experience extreme hardship if she elects to return to the Philippines to reside with her daughter. In her statement submitted on appeal, the applicant's mother writes that she suffers from back and leg pain, high blood pressure, and heart trouble. She states that it is difficult for her to walk, bend, or twist, and that she uses a cane or walker. The applicant's mother states that she will be unable to obtain or afford proper medical treatment in the Philippines, because the applicant would be unable to obtain employment in the Philippines. The record contains no documentation that establishes this assertion.

Counsel highlights the lack of security in the Philippines, asserting that it would be dangerous for the applicant's mother to return to her native country. The documentation submitted, however, contains only generalized information regarding crime and terrorist activities, particularly on the island of Mindanao. There is no evidence that the applicant's mother would be obliged to travel to Mindanao for any reason, or that she would be at greater risk of becoming a victim of criminal activity than other people in the Philippines.

Counsel contends that it would be emotionally and financially difficult for the applicant's mother to survive in the United States without the applicant. The AAO recognizes that the separation of family members usually causes emotional, if not financial worries. Nevertheless, 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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant's mother states that she requires the applicant's assistance in bathing and other personal activities, and that the applicant takes her to medical appointments and assists her with mobility in general. The record contains a medical report for the applicant's mother dated May 23, 2003, prepared by [REDACTED] Physician's Assistant. Mr. [REDACTED] indicates that the applicant's mother suffers a great deal of back pain and cannot walk without a walker. Mr. [REDACTED] recommends the applicant's mother be assisted in moving about and in her daily activities. In their statements, the applicant, her mother, and her sisters maintain that the applicant is the only member of the family who has a lifestyle that allows her to care for the applicant's mother. It appears that it would be more inconvenient for the applicant's sisters to assist their mother, but the documentation on the record fails to establish that they would be unable to do so. The record also fails to establish that there are no other relatives, friends, or caretakers available to assist the applicant's mother, should the applicant depart the United States.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.