

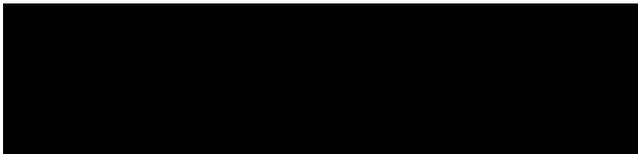


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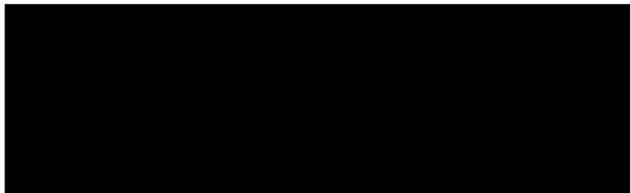


FILE: Office: SAN FRANCISCO Date: JUL 12 2006

IN RE: Applicant: 

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:



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, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his U.S. citizen father and permanent resident mother.

The district director concluded that the applicant 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. *Decision of the District Director*, dated June 30, 2004.

On appeal, counsel for the applicant contends that the applicant's parents will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated July 29, 2004. Counsel contends that the district director erred in finding that the applicant committed a material misrepresentation, and in applying an erroneous legal standard to the applicant's waiver application. *Id.*

The record contains briefs from counsel; a joint statement from the applicant's parents; a copy of the applicant's father's U.S. passport and naturalization certificate; a copy of the applicant's mother's permanent resident card; a copy of the naturalization certificates from the applicant's sisters; a copy of the birth certificate of the applicant's niece; documentation relating to conditions in the Philippines; documentation of the applicant's parents' medical history; an evaluation of the applicant's family's mental health conducted by a licensed clinical and forensic psychologist; letters verifying the employment of the applicant's parents; copies of tax records for the applicant's parents; evidence of the applicant's mother's health insurance; documentation of the applicant's parents' automobile and home insurance; documentation to show that the applicant's parents and sister own a home together; documentation of the applicant's parents' mortgage and automobile payments, and; a copy of the applicant's birth certificate. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on or about November 23, 1995 the applicant entered the United States using a passport and B-2 visa that belonged to another individual. The applicant stated that he paid an agent to obtain the documents. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. Accordingly, the applicant 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).

On appeal, counsel contends that the applicant's misrepresentation of his identity was not material. *Brief in Support of Appeal*, dated July 29, 2004. Counsel cites the decision in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as authority for the elements of a material misrepresentation, as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

*Brief in Support of Appeal* at 13 (quoting *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961). Based on this standard, the applicant's misrepresentation was material.

The applicant misrepresented his identity to immigration officials in order to procure the benefit of entry to the United States. In such an instance, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to him, and whether any United States government agencies possess information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented his identity, he cut off these material inquiries. Specifically, the inspecting officer was unable to determine whether the applicant was the true owner of the passport and visa, whether he possessed valid entry documents of his own, or whether the United States possessed information that has a bearing on the applicant's eligibility for entry.

Counsel suggests that the applicant's misrepresentation was not material if he would have been eligible for a B-2 visa had he applied. Yet, whether the applicant would have been issued a B-2 visa through legal means is not relevant to determining whether his misrepresentation was material under the present facts. The applicant made a willful misrepresentation in order to gain admission to the United States, not to gain a B-2 visa. Had he revealed his true identity to the inspecting officer, he would have been refused admission due to his lack of valid entry documents. Thus, the applicant misrepresented his identity to gain a benefit under the Act for which he was not eligible, and such misrepresentation was material.

Further, the record strongly suggests that the applicant was not eligible for a B-2 visa at the time he entered the United States. The applicant submitted a Form G325A, Biographical Information, that reflects that he has resided and worked in the United States since as early as April 1996. Thus, it appears that his intention in

entering the United States was to reside for an indefinite period. Such intent is not permitted in B-2 status. The applicant has not established that, had he represented his true intentions to U.S. government officials, he would have been eligible for a B-2 visa.

Based on the foregoing, counsel's assertion that the applicant's misrepresentation was immaterial is not persuasive. The applicant has not established that he was erroneously deemed inadmissible.

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 hardship suffered by the applicant's parents. 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 Bureau 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's parents would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The record contains a statement from the applicant's parents in which they expressed that they will experience hardship if the applicant is compelled to depart the United States. The applicant's parents stated that they have numerous relatives in the United States who are either citizens or permanent residents, including two daughters, two sons-in-law, two grandchildren, seven siblings with their respective families, and numerous aunts, uncles, cousins, nephews, and nieces. *Statement from Applicant's Parents* at 2-3, dated April 22, 2004. The applicant's parents provided that they live with the applicant, their two daughters, their two sons-in-law,

and their two grandchildren. *Id.* They stated that they immigrated to the United States in 1994 at the age of 46. *Id.* at 3.

The applicant's parents indicated that they experience extreme hardship when thinking about the possibility of the applicant being compelled to depart the United States. *Id.* at 4. They expressed that they are experiencing stress due to the applicant's immigration difficulties, and that the separation of their family will cause them to have a psychological break down. *Id.* at 5. They stated that they wish to keep their family together, and that they will worry about the applicant if he must begin a new life in the Philippines. *Id.* at 11.

The applicant's parents stated that they both have health problems that require care, and that they may not receive adequate medical attention in the Philippines. *Id.* at 5. They indicated that they will lose their health insurance should they relocate to the Philippines, and they and the applicant would be unable to afford the high cost of care there. *Id.* at 5-6. They stated that they rely on their children, especially the applicant, in order to travel to doctor visits and other errands. *Id.* at 10.

The applicant's parents provided that they would experience severe financial consequences should they relocate to the Philippines, as they would lose their jobs and savings, and their house would be foreclosed. *Id.* at 6. They explained that they, the applicant, and their two daughters purchased a home together, and they divide the expenses equally. *Id.* at 7. They described their monthly household expenses, totaling approximately \$5,525, and they indicated that the applicant contributes approximately \$750 per month to this sum. *Id.* at 7-8. They asserted that, without the applicant's support, they would be unable to meet their income requirements. *Id.* at 8.

The applicant's parents stated that political and security conditions are poor in the Philippines, and that they would have difficulty relocating there. *Id.* at 9. They indicated that they would have limited employment options, and that the applicant would be unable to support them. *Id.*

The applicant submitted a report from [REDACTED], a licensed clinical and forensic psychologist, that discusses the mental health status of the applicant and his parents. [REDACTED] stated that the applicant and his parents are experiencing feelings of sadness and despair. *Report from [REDACTED]* at 2, dated May 15, 2004. [REDACTED] suggests that such stress contributes to the applicant's mother's high blood pressure, migraines, high cholesterol, and sleeping problems, and to the applicant's father's high blood pressure and sleeping problems. *Id.* at 2, 6-7. She noted that the applicant's father is a former smoker, and he has had two heart attacks. *Id.* at 2. [REDACTED] found that the applicant's mother is at risk of developing Post Traumatic Stress Disorder. *Id.* at 7.

She stated that the applicant is often the primary caretaker of his family. *Id.* [REDACTED] observed that the applicant's mother "is the one in the family who keeps everyone together," including making sure the applicant's father gets to work on time, making sure the applicant gets up on time, making breakfast for the family, and washing laundry. *Id.* at 5-6.

[REDACTED] further explains that the applicant would experience hardship if he relocates to the Philippines, as he would have few employment opportunities and his brother there lacks resources to assist him. *Id.* at 8. She noted that the applicant is close with his sisters and nieces. *Id.* at 12.

recommended that the applicant's parents seek a mental health professional for treatment. *Id.* at 13-15.

Counsel asserts that the applicant's parents have strong ties in the U.S. and none abroad or in the Philippines. *Brief in Support of Appeal* at 5, dated July 29, 2004. Counsel contends that the applicant's parents cannot return to the Philippines with the applicant, and thus denial of the waiver application will result in family separation. *Id.* at 6. Counsel cites the decision in *Mejia-Carrillo v. INS*, 656 F.2d 520 (9<sup>th</sup> Cir. 1981), to stand for the proposition that separation from family alone may constitute extreme hardship. *Id.* at 7. Counsel asserts that "all that is required is to demonstrate the hardship to the qualifying relative that would result in relocating to the applicant's home country." *Id.* at 4(emphasis in original).

Counsel contends that, as the applicant's actions that led to his inadmissibility occurred prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), his waiver application should be adjudicated based on the pre-IIRIRA law governing waivers that was in effect as of the date of his misconduct. *Id.* at 10-11. Counsel cites the decision in *INS v. Cyr*, 533 U.S. 289 (2001), to stand for the proposition that IIRIRA should not be applied retroactively to conduct which occurred prior to September 30, 1996. *Id.* at 11. Counsel asserts that the applicant meets the standard for approval of a waiver under pre-IIRIRA law. *Id.* at 12.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States.

As a preliminary matter, the AAO finds that the applicant's waiver application is properly adjudicated under the waiver standards enacted by IIRIRA. The applicant filed his Form I-601 application for a waiver on June 18, 2004. As IIRIRA was enacted on September 30, 1996, the applicant's waiver application was clearly filed after the provision of IIRIRA took effect, and the provisions of IIRIRA apply. *See e.g. Bradley v. Richmond School Board*, 416 U.S. 696, 710-11 (1974).

Further, the evidence of record contains explanations of hardships that the applicant will endure if he returns to the Philippines. However, hardship to the applicant is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant will bear significant consequences if he is separated from his family members in the United States and if he is compelled to start a new life in the Philippines, only hardship to the applicant's parents may be properly considered in this section 212(i) waiver proceeding.

The applicant's parents provided that they will experience significant economic hardship if the applicant departs the United States. They stated that the applicant contributes approximately \$750 per month to their households expenses, and without it they will possibly lose their home and present standard of living. However, the applicant has not provided evidence of his employment, income, or contributions to his household's expenses. The applicant's parents indicated that they live with the applicant, their two daughters, and their two sons-in-law. While there are seven adults in the household, the applicant has not provided documentation to show whether his sisters and brothers-in-law work, what is their income, and what financial contributions they make to the household. Further, the applicant has not submitted documentation to show his current resources, such as bank statements or evidence of other property, that could be used to fund his return to the Philippines. The applicant's parents stated that they would have limited employment options in the Philippines, yet the applicant has not submitted clear evidence to support this assertion. Going on record

without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted that the applicant's parents each filed Forms I-864, Affidavit of Support, on behalf of the applicant in 2003, pledging that they are capable of financially supporting the applicant in the United States. The affidavits of support contradict a finding that the applicant's parents cannot meet their economic needs without the applicant's contribution.

Thus, the AAO lacks sufficient documentation to assess the true economic impact the applicant's departure would have on his parents. The applicant has not shown that removing one working adult from a household of seven adults will cause his parents significant economic hardship. Nor has the applicant established that he lacks independent resources such that his parents would be required to support his return to the Philippines.

The applicant's parents stated that they both have health problems that require care, and that they may not receive adequate medical attention in the Philippines, in part due to the loss of their health insurance. They stated that they rely, in part, on the applicant in order to travel to doctor visits. The applicant provided medical records for his parents. However, as correctly noted by the district director, the medical records do not reflect that the applicant's parents have health conditions that are unusual for their age or that require immediate or uncommon medical care. Further, as the applicant's parents reside with four adults other than the applicant, it is assumed that they can obtain assistance in traveling to medical appointments from other family members in the applicant's absence.

While the applicant's parents express concern regarding whether they can obtain adequate health care in the Philippines, the applicant has not submitted documentation to show that his parents have health problems for which there is no treatment there. Nor has the applicant provided evidence that health care in the Philippines is beyond the economic means of his parents. While [REDACTED] recommended that the applicant's parents seek further mental health care, the applicant has not indicated that they are currently receiving treatment for mental health conditions, such that they may be unable to continue in the Philippines.

Accordingly, the applicant has not shown that his parents' health status requires his assistance, such that they will experience significant physical hardship if the applicant departs the United States.

The applicant's parents expressed that they will experience extreme emotional hardship if the applicant is compelled to depart the United States. They indicated that they share a close relationship with him, and that they do not wish to be separated. [REDACTED] evaluated the applicant's parents and found that they exhibit signs of mental health disorders including sadness and despair, which contribute to their physical health problems. The AAO acknowledges that the applicant's parents will endure emotional hardship as a result of separation from the applicant should they remain in the United States. However, the applicant has not established that such consequences are more severe than those typical to individuals separated as a result of deportation or exclusion.

It is observed that, if the applicant's parents remain in the United States, they will continue to have an extensive network of family members on which to call for emotional support, including four other adults with whom they reside. Thus, the applicant's parents will not be left alone.

As discussed above, the applicant submits an evaluation from a licensed clinical and forensic psychologist that discusses his parents' mental health. However, the single evaluation is of limited use, as it was

conducted for the purpose of this proceeding, and does not represent treatment for a mental health disorder. The applicant has provided no evidence that his parents received or required follow-up evaluation from a mental health professional. Further, [REDACTED] expressed the opinion that the stress the applicant's parents are experiencing is a contributor to their physical health problems, but her report does not clearly reflect the degree of connection between the applicant's immigration difficulties and his parents' health. For example, reference is made to the fact that the applicant's father was a smoker and he suffered two heart attacks, and the relation of the applicant's present circumstances to these health problems is not fully explained. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's parents, it does not show that, should the applicant depart the United States, his parents will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

It is further noted that [REDACTED] observed that the applicant's mother "is the one in the family who keeps everyone together," including making sure the applicant's father gets to work on time, making sure the applicant gets up on time, making breakfast for the family, and washing laundry. *Report from [REDACTED]* at 5-6. Thus, it is evident that the applicant's mother enjoys substantial capability and is not dependent on the applicant for daily functions.

Counsel asserts that "all that is required is to demonstrate the hardship to the qualifying relative that would result in relocating to the applicant's home country." *Id.* at 4(emphasis in original). Thus, counsel suggests that family separation is per se extreme hardship. However, 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. Counsel correctly states that separation from family alone may constitute extreme hardship. However, under the present facts, the applicant has not shown that family separation would cause his parents to suffer emotional hardship that rises to the level of extreme hardship.

The applicant's parents stated that political and security conditions are poor in the Philippines, and that they would have limited employment options there. They indicated that the applicant would be unable to support them should they relocate with him. Counsel asserts that the applicant's parents cannot relocate to the Philippines. However, the applicant has not shown that relocation to the Philippines is not viable for his parents. Contrary to counsel's assertion that the applicant's parents have no ties to the Philippines, the record shows that they have a son who resides there with his family. As natives of the Philippines and Tagalog speakers, they would not be forced to adjust to an unfamiliar culture and language. In fact, [REDACTED] repeatedly referred to the fact that the applicant's father does not speak clear English, and she remarked that she would like to see the results of a study of him conducted in Tagalog. [REDACTED] comments suggest that the applicant's father is more comfortable communicating in his native language. The applicant provided a copy of a report from the U.S. Department of State regarding conditions in the Philippines. Yet, as observed by the district director, the report does not show that all areas of the Philippines pose significant risks to the applicant's parents, such that relocation there constitutes extreme hardship. Yet,

as a U.S. citizen and permanent resident, the applicant's parents are not required to reside outside the United States as a result of the applicant's inadmissibility. They may remain in the United States if they choose.

All prospective hardships to the applicant's parents have been considered separately and in aggregate. Based on the foregoing, the instances of hardship that will be experienced by the applicant's parents should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. While they will endure some economic adjustment and they will lose the companionship of the applicant should they remain in the United States, the record shows that they will continue to have the support of numerous close family members and sufficient economic means to meet their needs. Having found the applicant statutorily ineligible for relief, no purpose would be 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(a)(6)(C) 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.