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U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA

Date: SEP 08 2006

IN RE:

[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.

for
Robert P. Wiemann, Chief
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 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and both of her parents are United States citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and parents.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated November 12, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred in not applying the more permissive standard of pre-IIRIRA section 212(i) of the Immigration and Nationality Act (Act), as the misrepresentation occurred in 1993. Counsel asserts that CIS erred as a matter of law in finding that the applicant was inadmissible and that she failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated December 14, 2004.*

In support of these assertions, counsel submits a brief. The record also includes a joint affidavit of the applicant's parents, dated January 11, 2005; the applicant's Philippine birth certificate; a list of 2003-2004 medical appointments and medications for the applicant's mother; copies of the U.S. passports for the applicant's parents; affidavit of the applicant's spouse, dated January 10, 2005; a copy of the applicant's marriage certificate dated March 10, 2001; a copy of the naturalization certificate for the applicant's spouse; bank statements for the applicant's spouse; Philippines, Consular Information Sheet, U.S. Dept. of State, January 11, 2005; Philippine Economic Outlook, October 2003; a letter from the applicant, dated March 25, 2002; a copy of the false seafarer's identification card and Philippine coast guard seaman's service record book used by the applicant; a copy of the false U.S. visa used by the applicant; a copy of the false arrival card, Bureau of Immigration, Philippines, used by the applicant; tax statements for the applicant and her spouse; an employment letter for the applicant's spouse; and a copy of U.S. passport for the applicant's spouse. 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 the applicant entered the United States on September 19, 1993 with a visa and passport issued under a different name. *Form I-485; See Also copy of false entry documents.* The applicant is therefore inadmissible. The AAO acknowledges counsel's assertion that the applicant's use of an alias name is not a *material* misrepresentation (emphasis added). *Attorney's brief, p.25-30.* Counsel states that there is nothing in the record to suggest that a mere use of an alias name by the applicant would have led to a denial of her visa. *Attorney's brief, p.27.* The AAO finds that counsel's analysis is incorrect.

The determination of materiality is a fact which would make the alien excludable or shut off a line of inquiry which may have resulted in exclusion. *Matter of S-& B-C-*, 9 I&N Dec. 436 (BIA 1960). The applicant misrepresented her 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 her, and whether any United States government agency possesses 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 her identity, she 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 she possessed valid entry documents of her 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 she would have been eligible for a visa had she applied. *Attorney's brief, p.27.* Yet, whether the applicant would have been issued a visa through legal means is not relevant to determining whether her misrepresentation was material under the present facts. The applicant made a willful misrepresentation in order to gain admission to the United States. Had she revealed her true identity to the inspecting officer, she would have been refused admission due to her lack of valid entry documents. Thus, the applicant misrepresented her identity to gain a benefit under the Act for which she was not eligible, and such misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse, mother, and father if the applicant is removed. If 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).

Counsel states that the Service erred in not applying the more permissive standard of pre-IIRIRA section 212(i) of the Immigration and Nationality Act (Act), as the misrepresentation occurred in 1993. *Attorney's brief, p.3.* The

AAO finds this analysis to be incorrect. The applicant sought legal admission into the United States when she applied to adjust her status to lawful permanent resident in April 2001, several years after the enactment of IIRIRA. *Form I-485*. Therefore, the applicant's waiver of admission will not be analyzed under pre-IIRIRA standards.

Furthermore, in the Board of Immigration Appeals ("Board") case, *Matter of Cervantes*, 22 I&N Dec. 560, 563-65 (BIA 1999), the Board held that:

[T]he enactment of new statutory rules of eligibility for discretionary forms of relief acts to withdraw the [Attorney General's, now the Secretary of Homeland Security [Secretary]] jurisdiction to grant such relief in pending cases to aliens who do not qualify under those new rules.

....

[W]e . . . find that the new provisions in section 212(i) must be applied to pending cases.

The AAO thus finds that the applicant is subject to the current section 212(i) waiver standards.

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 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 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.

The AAO notes that extreme hardship to the applicant's spouse, mother, or father must be established in the event that he or she resides in the Philippines or the United States, as he or she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to the Philippines, the applicant needs to establish that her spouse will suffer extreme hardship. Apart from his U.S. citizen in-laws, the record makes no mention of the applicant's spouse's family ties to the United States or the Philippines. The applicant's spouse is employed at a stable company. *Affidavit of the applicant's spouse, dated January 10, 2005*. The applicant's spouse stated that it would be extremely difficult and virtually impossible for him to relocate to the Philippines, as he will not be able to find a job in a country where the unemployment rate is very high and job opportunities are very scarce. *Id.* The AAO observes that as of July 2003, the unemployment rate in the Philippines was 12.7%. *Philippine Economic Outlook, October 2003, p.3*. The applicant's spouse stated that he suffers from high blood pressure and is under constant medical care to monitor his condition. *Affidavit of the applicant's spouse, dated January 10, 2005*. The AAO notes that the record does not include any medical documentation regarding the applicant's spouse's health. While the AAO acknowledges the inconvenience of having high blood pressure, it notes that the applicant's spouse's health condition is non-life threatening and he is still able

to work and function. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse states that without the applicant's constant monitoring of his medication and food intakes, he does not think he will be able to lead a healthy and long life. *Id.* He will suffer a breakdown if he is exposed to significant psychological stress such as the break-up of his family. *Id.* The AAO notes that the record does not include any psychiatric or medical documentation regarding the mental or physical health of the applicant's spouse. The applicant's spouse states that he will not be able to support another household if he were to remain in the U.S. and the applicant were removed to the Philippines. *Id.* The applicant and her spouse are a two-income family. *Id.* The applicant's spouse would be saddled with debts, foreclosure proceedings, possible court actions and bankruptcy without the financial help of the applicant. *Id.* The AAO observes there is nothing in the record that shows the applicant would be unable to contribute to her spouse's and her own financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's U.S. citizen mother travels with the applicant to the Philippines, the applicant needs to establish that her mother will suffer extreme hardship. The applicant's mother has lived in the United States for 13 years and has numerous family ties. *Affidavit of the applicant's parents, dated January 11, 2005.* One of her daughters is a lawful permanent resident while the other is a U.S. citizen, her two sons are U.S. citizens, and her grandchildren, cousins, nieces, and nephews are U.S. citizens. *Id.* The applicant's mother has a heart problem. *Id.* The record includes a schedule of the applicant's mother's medical appointments and a typed list, unsigned by any medical professional, of the medications that the applicant's mother is taking. *See medicine list for the applicant's mother.* The AAO notes there are no official medical documents in the record regarding the applicant's mother's physical or mental health. In addition, the record does not address job skills that the applicant's mother may possess and her potential ability to work in the Philippines. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her mother if she were to reside in the Philippines.

If the applicant's U.S. citizen mother resides in the United States, the applicant needs to establish that her mother will suffer extreme hardship. The applicant's mother stated that it is mental torture for her to think that the applicant would be forced to spend the rest of her life away from her parents. *Affidavit of the applicant's parents, dated January 11, 2005.* The applicant's mother has suffered sleepless nights and much anxiety due to the applicant's uncertain future. *Id.* The AAO notes that there is nothing in the record from a professional regarding the applicant's mother's mental health. The applicant's mother states that the family unit will disintegrate if she and her spouse remain in the United States without the applicant. *Id.* In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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*, 927 F.2d 465, 468 (9th Cir. 1991), 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 removal and does not rise to the level of extreme hardship. On a financial level, the applicant's parents could not afford to maintain a household without the help of the applicant and her sister. *Affidavit of the applicant's parents, dated January 11, 2005*. The applicant's sister could not support their expenses without the applicant's assistance. *Id.* The AAO observes there is nothing in the record that shows the applicant would be unable to contribute to her parents' financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her mother if she were to reside in the United States.

If the applicant's U.S. citizen father travels with the applicant to the Philippines, the applicant needs to establish that her father will suffer extreme hardship. The applicant's father has lived in the United States for 33 years and has numerous family ties. *Affidavit of the applicant's parents, dated January 11, 2005*. One of his daughters is a lawful permanent resident while the other is a U.S. citizen, his two sons are U.S. citizens, and his grandchildren, cousins, nieces, and nephews are U.S. citizens. *Id.* The applicant's father suffers from hypertension and high levels of cholesterol. *Id.* The AAO notes that the record does not include any medical documentation regarding the applicant's father's health condition. While the AAO acknowledges the inconvenience of having hypertension and high cholesterol, it notes that the applicant's father's health condition is non-life threatening and he is still able to work and function. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her father if he were to reside in the Philippines.

If the applicant's U.S. citizen father resides in the United States, the applicant needs to establish that her father will suffer extreme hardship. The applicant's father is very depressed over the applicant's immigration problem and has trouble sleeping. *Id.* The AAO notes that the record does not include any documentation regarding the applicant father's mental health. As previously mentioned, on a financial level, the applicant's parents could not afford to maintain a household without the help of the applicant and her sister. *Id.* The applicant's sister could not support their expenses without the applicant's assistance. *Id.* The AAO observes there is nothing in the record that shows the applicant would be unable to contribute to her parents' financial well-being from a location outside of the United States. 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). When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her father if he were to reside in 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(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.