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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA Date: **FEB 13 2007**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C)(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.

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 sustained.

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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 U.S. citizen spouse and their U.S. citizen children.

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. *Decision of the District Director, dated November 23, 2004.*

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship if the applicant returned to the Philippines. Counsel also asserts that Citizenship and Immigration Services (CIS) erred in overlooking that hardship to children can constitute hardship to the qualifying spouse when deprived of the applicant's presence and support. *Form I-290B; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a declaration of the applicant's spouse, dated January 13, 2005; a letter written by the applicant's spouse, dated August 22, 2002; a letter written by [REDACTED] M.D., Physicians Medical Terrace, dated August 12, 2004; a letter written by [REDACTED] Ph.D, Clinical Psychologist, County of Los Angeles, Department of Mental Health, dated March 22, 2004; a letter written by [REDACTED] M.D., Colorado Family Health Center, dated January 13, 2005; a letter written by [REDACTED] M.D., Medical Director, Community Care Center, dated August 22, 2002; Orders Appointing Conservator, Superior Court of California, County of Los Angeles, Mental Health Department, 2002-2005; a patient RX history listing medications prescribed to the applicant's daughter; informational materials on medications and mental conditions; medical prescriptions; White Memorial Medical Center, Discharge Instructions, dated July 19, 2001; employment letters for the applicant and her spouse; tax statements; and bank statements for the applicant and her 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 presented herself for admission as a visitor to the United States on or about February 7, 1991 at which time she made a willful misrepresentation of a material fact by presenting a passport and a B-2 visa that was issued to [REDACTED] and falsely representing herself to be that person. See *Form I-601; false Form I-94 card*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. 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) except in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B) of the Act, which both relate to petitions granted to battered spouses. The applicant does not fall into that category. Hardship to a child may be considered only as it might affect the qualifying relative. The only relevant hardship in the present case is hardship suffered by the applicant's spouse 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).

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 must be established in the event that he resides in the Philippines or the United States, as he 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. The applicant's spouse is a native of the Philippines, and he has lived in the United States over 20 years. *Form G-325A*. The applicant's spouse's parents and children reside in the United States. *Id.; Attorney's brief*. The applicant and her spouse's U.S. citizen daughter has been diagnosed as having Schizoaffective Disorder and Bipolar I Disorder for which she has monthly appointments for follow-up care. See letter written by [REDACTED] M.D., Physicians Medical Terrace, dated August 12, 2004; Letter written by [REDACTED], Ph.D, Clinical Psychologist, County of Los Angeles,

Department of Mental Health, dated March 22, 2004. As noted in the record, schizoaffective disorder symptoms look like a mixture of two kinds of major mental illnesses: mood (affective) disorders and schizophrenia. See report, *National Mental Health Association, <http://www.nmha.org/infoctr/factsheets/52.cfm>*. She must be constantly medicated, and her current regime of medications involves at least eight different anti-psychotic, anti-depressant, and anti-seizure medications. *Declaration of the applicant's spouse, dated January 13, 2005; See also Patient RX History listing medications prescribed to the applicant's daughter.* In the last 10 years, she has been hospitalized on numerous occasions. *Declaration of the applicant's spouse, dated January 13, 2005.* In 2001 the applicant's daughter was brought to the hospital for not taking her medication which resulted in symptoms of yelling, screaming, laughing and crying. *White Memorial Medical Center, Discharge Instructions, dated July 19, 2001.* In 2002 she was again placed in a locked institute for several months. *Letter written by [REDACTED] M.D., Medical Director, Community Care Center, dated August 22, 2002.* In addition to these mental health issues, the applicant's daughter has also been diagnosed as having Diabetes Mellitus, Hypertension, and Hyperlipidemia. *Letter written by [REDACTED] M.D., Colorado Family Health Center, dated January 13, 2005.* Because of the applicant's daughter's outbursts, aggression and seizures, she cannot be left alone and must be constantly supervised. *Declaration of the applicant's spouse, dated January 13, 2005.* From 2002 through the present time, the applicant and her spouse have alternated being court appointed conservators for their daughter. *See Orders Appointing Conservator, Superior Court of California, County of Los Angeles, Mental Health Department, 2002-2005.* The applicant's daughter spends nearly all her time with the applicant. *Declaration of the applicant's spouse, dated January 13, 2005.* Additionally, the applicant's daughter has been receiving benefits from MediCal since 1999. *Letter from [REDACTED] Ph.D., Clinical Psychologist, County of Los Angeles, Department of Mental Health, dated March 22, 2004.* If the applicant's spouse were to reside in the Philippines, it would not be possible for him to afford the medication his daughter needs to minimally function. While the AAO notes that a child does not constitute a qualifying relative in this particular case, it also acknowledges the significant health conditions of the applicant's daughter and how her illness affects the applicant and her spouse. The applicant's daughter receives a great amount of medical care in the United States. *See medical letters and records.* The applicant's spouse would suffer emotionally and financially if he resided in the Philippines due to the added burden of caring for his ill daughter. The AAO finds when looking at the aforementioned factors, the applicant has 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. If the applicant were removed from the United States, the applicant's spouse would be the sole caregiver for their mentally ill daughter. *See Orders Appointing Conservator, Superior Court of California, County of Los Angeles, Mental Health Department, 2002-2005.* The applicant's spouse is a diabetic. *See medical prescription for the applicant's spouse.* As a result of his own health issues, the applicant's spouse states that it would be difficult to financially support his daughter on his own. *Declaration of the applicant's spouse, dated January 13, 2005.* He also indicates that he would not be able to watch her full-time, requiring her to be institutionalized, a financial burden he could not shoulder indefinitely. *Id.*

The AAO acknowledges counsel's assertion that the applicant's spouse's own hardship will be significantly increased by the effect of the applicant's removal on his daughter. *Attorney's brief.* While the AAO notes that 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)*), it finds that the

facts of this particular case are not typical. When looking at the aforementioned factors, the AAO finds that the applicant has also demonstrated extreme hardship to her spouse if he were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which she now seeks a waiver, and periods of unauthorized presence and employment.

The favorable and mitigating factors are the extreme hardship to his spouse if she were refused admission, his long-term and supportive relationship with her-spouse and child, and her lack of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.