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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO (SACRAMENTO), CA Date: JAN 26 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport under a different name. The record indicates that the applicant's parents are lawful permanent residents and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to continue to reside and work in the United States, to help support her lawful permanent resident parents.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's lawful permanent resident parents and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated May 16, 2005.

On appeal, the applicant, through counsel, contends that Citizenship and Immigration Services (CIS) erred and committed a grave abuse of discretion in denying the applicant's waiver for ground of inadmissibility under section 212(a)(6)(C)(i) of the Act. Counsel asserts that the denial of the applicant's admission into the United States would result in extreme hardship to her lawful permanent resident parents. *Form I-290B*, filed June 15, 2005.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's parents, and two "prescription blank[s]," dated May 27, 2005, from Dr. [redacted], stating the applicant's parents suffer from various illnesses and take prescriptions for those illnesses. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> (i) In general.-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.
>
> ...
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (i) (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 immigrant 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...

In the present application, the record indicates that on April 27, 1994, the applicant's lawful permanent resident father filed a Petition for Alien Relative (Form I-130) for the applicant, which was approved on May 24, 1994. On June 15, 1997, the applicant entered the United States using a fraudulent passport under the name " " On November 5, 2002, the applicant's employer, Facility, filed an Immigrant Petition for Alien Worker (Form I-140), which was approved on December 12, 2002. On March 5, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On February 9, 2005, the applicant filed an Application for Waiver of Ground of Inadmissibility (Form I-601). On May 16, 2005, the District Director denied applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her lawful permanent resident parents.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 lawful permanent resident 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 lawful permanent resident parents would face extreme hardship if the applicant were removed to the Philippines. The applicant's parents state they have eight children and six of their children reside in the United States. *See Joint Affidavit of and* dated February 26, 2005. The applicant's father states that even though he is employed with and receives medical benefits, and his wife is unemployed, and receives Medicare, the applicant "helps us enormously in our finances and especially for our medical expenses." *Id.* Counsel provides two statements from Dr. claiming the applicant's parents suffer from different types of illnesses and counsel claims that the removal of the applicant would "worsen their health problem [sic]." *See Statements by Dr. dated May 27, 2005*, and *Brief attached to Form I-290B*, page 5, filed June 15, 2005. Counsel asserts that the applicant provides financial assistance to her parents, and if she is removed to the Philippines, she could not continue to assist her parents financially. *Id.* Counsel cites the poor economic

conditions and general instability in the Philippines as further reasons that the applicant cannot return there. *Id.*

Counsel does not establish extreme hardship to the applicant's lawful permanent resident parents if they remain in the United States, with her father maintaining his employment and their close proximity to the other children. The applicant's parents have six children residing in the United States, two of which are naturalized United States citizens and the other four are lawful permanent residents. The applicant's parents claim they do not want to "beg and ask for financial help" from the other children, because they have families of their own. However, the AAO notes that since the other children are in the United States and allegedly employed, they could provide financial help to their parents. Counsel claims *Tukhovich v. INS*, 64 F.3d 460 (9th Cir. 1995) should be applied in this case. In *Tukhovich*, the alien, a Thai citizen, had a good job in the United States and was solely supporting her parents and family in Thailand. In the present case, counsel has not demonstrated that the applicant solely supports her parents or family in United States or in the Philippines. Additionally, the applicant's father is employed in the United States. Even though the applicant's parents state the applicant provides financial assistance to them, "especially for our medical expenses," no documentation has been provided to show that they would suffer any economic loss if the applicant were removed to the Philippines. Further, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant, a trained nurse, will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan*, *supra,* the Ninth Circuit Court of Appeals 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 lawful permanent resident parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain 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 parents 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 an application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.