



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: MANILA, PHILIPPINES Date: **APR 15 2008**
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 Officer-in-Charge, Manila, Philippines 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 admission into the United States by fraud or willful misrepresentation. The applicant is the son of U.S. citizen parents 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 his mother and father.

The Officer-in-Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon the applicant's U.S. citizen mother and U.S. citizen father and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated June 13, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding the applicant to have failed to meet the burden of establishing extreme hardship to his qualifying relatives, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of the assertions made on appeal, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's parents; a statement from [REDACTED], M.D.; statements from [REDACTED] M.D.; a statement from [REDACTED], M.D., publications on medical conditions and medications; prescription records for the applicant's mother and father; a statement from the applicant; and a police clearance letter for the applicant. 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 or, 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), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that in 2000 the applicant attempted to obtain an F-1 student visa under a false name in order to join his parents in the United States. *Statement from the applicant*, dated August 16, 2000. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Act. He is, however, eligible to apply for a waiver of this inadmissibility under section 212(i) based on his U.S. citizen parents.

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 himself would experience is not directly relevant to the determination of whether he is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen parents if the applicant's waiver request is denied. 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 mother and/or father must be established in the event that they reside in the Philippines or the United States, as they are 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 mother travels with the applicant to the Philippines, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother's former nationality was the Philippines. *See naturalization certificate*. The applicant's mother adjusted her status to lawful permanent resident in 1991 and became a United States citizen in 1998. *Id.*; *Form I-130, Petition for Alien Relative; Certificate of Naturalization for the applicant's mother*. All of the surviving siblings of the applicant's mother live in the United States. *Statement from the applicant's parents*, dated December 27, 2005. The applicant's mother suffers from osteoarthritis, hypertension, osteoporosis, and varicose veins in both of her legs. *Statement from [REDACTED]*, M.D., dated January 8, 2005. The applicant's mother is currently taking Micardits for hypertension and Diclofenac for pain control, and has some limitation on ambulation due to her chronic pain from osteoarthritis as well as osteoporosis. *Id.* The applicant's mother is in her seventies. *See naturalization certificate*. The applicant's parents assert that the situation of the Philippines has been unstable. *Statement from the applicant's parents*, dated December 27, 2005. In support of this statement, the record includes a travel warning issued by the United States Department of State. *See Department of State Travel Warning*, dated June 16, 2006. The Department of State urges American citizens to consider carefully the risks of travel to the Philippines and continues to warn against all but essential travel throughout the country in light

of heightened threats to Westerners. *Id.* When looking at the aforementioned factors, specifically the significant health conditions of the applicant's mother as well as her age, the lack of family ties in the Philippines, the length of time the applicant's mother has resided in the United States, and country conditions in the Philippines as documented by the Department of State, the AAO finds that the applicant has demonstrated extreme hardship to his mother if she were to reside in the Philippines.

If the applicant's mother resides in the United States, the applicant needs to establish that she will suffer extreme hardship. As previously noted, the applicant's mother has several family members who live in the United States. *Statement from the applicant's parents*, dated December 27, 2005. The applicant's mother suffers on an emotional level from being separated from the applicant. At times, when talking to the applicant on the phone, she cannot help but cry. *Id.* From October 18, 2002 through the present time, the applicant's mother has been seeing a psychiatrist for depression and anxiety. *Statement from [REDACTED] M.D., P.A.*, dated December 21, 2005. It is the psychiatrist's assessment that these health problems are related to the separation of the applicant's mother from the applicant. *Id.* As a result of her depression and anxiety, she has been placed on Remeron, Clonazepam, Ambien, and Vitaplex vitamins. *Id.* She has been prescribed this medication for several years. *See patient prescription record, CVS pharmacy*, dated December 27, 2005. The applicant's parents note that while they have relatives around, it is difficult to rely upon them as they have their own families for which they care. *Statement from the applicant's parents*, dated December 27, 2005. Their daughter can only visit them on weekends and has very limited time to help. *Id.* The applicant's mother does not drive and is sometimes too weak to walk to the bus stop. *Id.*; *Statement from [REDACTED]*

M.D., dated January 2, 2006 noting that the applicant's mother has a hard time with public transportation. *See also statement from [REDACTED] M.D.*, dated January 8, 2005 noting that the applicant's mother has some limitation on ambulation due to her chronic pain from osteoarthritis as well as osteoporosis. When looking at the aforementioned factors, particularly the significant mental health condition of the applicant's mother as evidenced by her continuing psychiatric treatment over the course of several years, the AAO finds that the applicant has demonstrated extreme hardship to his mother if she were to reside in the United States.

As the applicant has demonstrated extreme hardship to his United States citizen mother, it is unnecessary to conduct an extreme hardship analysis for the applicant's United States citizen father, the other qualifying relative in this case.

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 he now seeks a waiver.

The favorable and mitigating factors are the extreme hardship to his United States citizen mother if he were refused admission, his supportive relationship with his mother as evidenced by his parents' statements, his lack of a criminal record, and the approved Form I-130 benefiting him.

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.