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U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: NEWARK, NEW JERSEY

Date: **JUL 15 2008**

IN RE:

Applicant:

[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, Newark, New Jersey, and 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 by presenting a passport and lawful permanent resident ADIT stamp (IR-1) in someone else's name. The record indicates that the applicant is the daughter of a naturalized United States citizen and 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 reside in the United States with her United States citizen mother and United States citizen daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated May 25, 2006.

On appeal, the applicant, through counsel, contends that the "decision to deny applicant's...Form I-601, was incorrect based upon the law." *Form I-290B*, filed June 22, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant's mother, daughter, and other family members, a psychological evaluation by [REDACTED] and medical documents for the applicant's mother. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) 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 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...

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's mother is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's mother.

In the present application, the record indicates that the applicant initially entered the United States on April 28, 1985, by presenting a passport and lawful permanent resident ADIT stamp (IR-1) in someone else's name. On February 28, 1996, the applicant's mother, a lawful permanent resident of the United States at the time, filed a Form I-130 on behalf of the applicant.<sup>1</sup> On September 11, 1996, the applicant's Form I-130 was approved. On August 26, 2003, the applicant's daughter, a naturalized United States citizen, filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On September 2, 2003, the applicant filed a Form I-601. On December 5, 2005, the applicant's second Form I-130 was approved. On May 25, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative. On July 26, 2007, the applicant's mother became a United States citizen.

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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen mother. 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 (Board) 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.

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<sup>1</sup> The AAO notes that the applicant's Form I-130 was filed as an unmarried child 21/older of permanent resident; however, the applicant was married on August 20, 1966 in the Philippines, and she divorced her husband on October 17, 1995 in New Jersey.

Counsel asserts that the applicant's United States citizen mother will suffer extreme hardship if the applicant is removed to the Philippines. Counsel states that the applicant's mother "suffers from several serious medical conditions...she suffers from hypertension, arthritis, chronic asthmatic bronchitis and anxiety neurosis." *Appeal Brief*, filed July 20, 2006; *see also letter from [REDACTED] M.D.*, dated June 30, 2006. The applicant's mother states she suffers from "asthma, high blood pressure and shortness of breath. [She] take[s] medication for [her] conditions." *Affidavit from [REDACTED]* dated June 17, 2006. Dr. [REDACTED] states the applicant "takes [the applicant's mother] for all her medical appts., administers her medications [and] picks up her medications from the pharmacy. [The applicant] provides this service for her which is necessary for her medical care." *Letter from [REDACTED] M.D., supra; see also affidavit from [REDACTED] supra* ("[The applicant] helps [her] take [her] medication and takes [her] to doctors' appointments."). Counsel asserts that the applicant's mother "suffers from serious medical conditions that would go untreated in the Philippines." *Appeal Brief, supra*. The AAO notes that [REDACTED] did not state that the applicant's mother could not receive treatment and/or prescriptions for her medical conditions in the Philippines. Further, there is no indication that the applicant's mother has to remain in the United States to receive her medical treatments and/or prescriptions. [REDACTED] diagnosed the applicant's mother with major depressive disorder. *Psychological Evaluation by [REDACTED] D.*, dated June 26, 2006. However, [REDACTED] states there is "no evidence of suicidal ideation." *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's mother and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's mother or any history of treatment for the depression and anxiety suffered by the applicant's mother. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Dr. [REDACTED] also diagnosed the applicant's daughter with adjustment disorder with mixed anxiety and depressed mood; however, [REDACTED] states the applicant's daughter "is clearly experiencing a rocky period after her divorce." *Id.* Furthermore, as noted above, the applicant's daughter is not a qualifying relative for a waiver under section 212(i) of the Act. Counsel states that if the applicant's mother joins the applicant in the Philippines, "she would never be able to afford medical treatment for her medical conditions there." *Appeal Brief, supra*. The AAO notes that the applicant is employed in the United States and it has not been demonstrated that she could not obtain a job in the Philippines to help with her mother's medical expenses. Additionally, the AAO notes that the applicant's mother is a native of the Philippines, who spent her formative years in the Philippines, she speaks the native language, and it has not been established that she has no family ties in the Philippines. In fact, the applicant states her grandchildren reside in the Philippines. *See Psychological Evaluation by [REDACTED] Ph.D., supra*. The AAO finds that the applicant failed to establish that her mother would suffer extreme hardship if she accompanies her to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's mother if she remains in the United States, in close proximity to her family and access to adequate health care. As a United States citizen, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's mother states she is "very worried about [the applicant's] immigration problems. If she were removed [she does not] know what [she] would do." *Affidavit from [REDACTED]*

[REDACTED], *supra*. The AAO notes that the applicant's mother has numerous family members residing in the United States and it has not been established that they could not help take care of the applicant's mother. *See Appeal Brief, supra*. Further, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to her mother'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 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. 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 United States citizen 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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 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.