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U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES, CA

Date:

JUL 24 2008

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 procured admission into the United States by fraud or willful misrepresentation on June 6, 1992. The applicant is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record does not support a finding that the applicant's father would experience extreme hardship above and beyond the normal disruptions involved in the removal of a family member. The application was denied accordingly. *Decision of the District Director*, dated January 6, 2006.

On appeal, counsel asserts that the applicant's father would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. He states that the applicant supports her father emotionally and financially, and cares for his medical needs. Counsel also states that the applicant has a steady record of employment, would not be able to find employment in the Philippines and has no criminal history. *Counsel's Brief*, dated February 2, 2006.

The record indicates that, having been denied a U.S. visa in her married name, the applicant acquired a Filipino passport in her maiden name, [REDACTED], and successfully obtained a visitor's visa to the United States. On June 6, 1992, the applicant presented this passport and visa to gain entry to the United States.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant or her children experience

due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). In *Salcido*, the court remanded to the Board of Immigration Appeals (BIA) for failure to consider the factor of separation despite respondent's testimony that if she were deported her U.S. citizen children would remain in the United States in the care of her mother and spouse. *See also Babai v. INS*, 985 F.2d 252 (6th Cir. 1993) (failure to consider hardship to U.S. citizen child if he remained in the United States is reversible error). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case and 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).

The AAO notes that extreme hardship to the applicant's father must be established in the event that he resides in the Philippines and in the event that he resides in 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.

In his brief, counsel states that if the applicant is removed to the Philippines the applicant's father will suffer severe emotional distress and will be putting his health at risk. *Counsel's Brief*, dated February 2, 2006. Counsel also asserts that the applicant supports her father financially. *Id.* The applicant states that she cares for her father, who is a U.S. citizen, but is not entitled to social security or medicare benefits. *Applicant's Statement*, January 28, 2006. She states that she is responsible for providing a home, clothing, food, and all of the medical assistance for her father. She states further that her father lives with her and she takes him to the hospital and all of his medical check-ups. The applicant asserts that her father does not have any other relatives in the United States who he can live with and/or who will pay for his care. *Id.*

The applicant's father states that he was one of the approximately 200,000 Filipinos who fought for the United States Army in World War II and was granted citizenship based on this service. *Father's Statement*, dated January 28, 2006. The applicant's father's statement seems to indicate that he resided in the Philippines from approximately September 2003 to January 20, 2006, when he last entered the United States. The applicant's father states that in March 2000 he was diagnosed with chronic hypertension, coronary arteriosclerosis, hyperlipidimia and hyperthyroidism by his doctor in the United States, [REDACTED]. He states that on September 19, 2003, while in the Philippines, he had surgery at the Lung Center of the Philippines. The applicant's father states that through these times his daughter supported him financially, emotionally and spiritually. He states that after his lung surgery she helped him and his life was prolonged because of her. On August 1, 2005, he states that he visited his cardiologist in the Philippines, [REDACTED]. So, and was diagnosed with hypertension, coronary heart artery disease and other related illnesses. He states that he also experiences frequent dizzy spells and occasionally falls. He states that he is wholly dependent on the applicant. The applicant's father states further that when he last entered the United States, on January 20, 2006, he went for a medical check-up with [REDACTED], who advised him to come in for a check-up every two weeks and that it is the applicant who makes sure he does not miss an appointment. Finally, the applicant's father asserts that he is eighty years old and would like to spend the remaining years of his life in the United States with the applicant. He states that if the applicant is removed from the United States he will die because taking her away from him is like taking his life as well. *Id.*

In support of these statements counsel submits medical documentation and country condition information for the Philippines. The record contains a letter from [REDACTED]. [REDACTED] states that the applicant's father has been his patient since March 2000 and has been diagnosed with hypertension, diabetes, multiple transient ischemic attack, coronary artery disease, benign prostatic hypertrophy, and hyperthyroidism. *Letter from Dr. [REDACTED]*, dated January 23, 2006. He states that the applicant's father frequently experiences dizziness and falls due to unsteady gait and experiences shortness of breath. [REDACTED] states that the applicant's father requires treatment with medications and monthly check-ups. *Id.* The record also includes a letter from [REDACTED], at the So Heart Clinic in the Philippines. [REDACTED] states that she examined the applicant's father in August 2005, diagnosing him with hypertension, coronary artery disease, Type II diabetes, cerebravascular disease and a multi-nodular colloid goiter. *Letter from [REDACTED]*, dated August 1, 2005. Her letter also lists the applicant's father's medications. *Id.* In support of the applicant's medical conditions, the record also contains copies of office visit receipts, prescriptions and prescription costs.

Counsel states that if removed to the Philippines the applicant would not be able to find employment to continue to support her father in the United States. *Counsel's Brief*, dated February 2, 2006. The applicant states that she is currently employed as an Administrator at Le Vien Homes, Incorporated and at the age of 55

years old it would be very hard for her to find well paying employment in the Philippines because of the economic situation in the country. *Applicant's Statement*, January 28, 2006. She states that if she is unemployed in the Philippines she does not know how she will support her family and her father's medical needs. She explains that while visiting the Philippines her father required surgery and the costs were very high, but she was able to pay them because of her job in the United States. *Id.* Counsel submits four articles concerning the economy and unemployment rates in the Philippines. The articles report that the Filipino economy is doing poorly and that the unemployment rate from 2005-2007 was expected to remain around 11 percent. *See Asian Development Outlook, 2005.*

The AAO finds that because of the applicant's father's medical conditions, his age and his reliance on the applicant for his everyday needs in the United States, he would suffer extreme hardship as a result of being separated from the applicant. However, the AAO also finds that the record fails to show that the applicant's father would suffer extreme hardship if he relocated with the applicant to the Philippines. Although the record indicates that the unemployment rate is high in the Philippines, the record does not show that an individual with the applicant's background would not be able to find employment. The record also does not show that the applicant's husband would not be able to find employment in the Philippines to help with supporting the family. Furthermore, the record shows that the applicant's father was able to find adequate medical care in the Philippines for his medical conditions. Thus, the AAO concludes that the current record does not show that the applicant's father would suffer extreme hardship as a result of the applicant's inadmissibility to 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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*, *supra*, 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.

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