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



U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

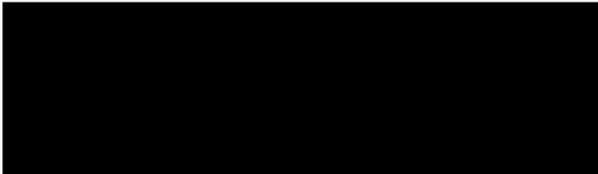
Date: **JUL 28 2008**

IN RE: Applicant:



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. The record indicates that in March 1989, the applicant entered the United States by using a passport and visa belonging to another individual. She was thus 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 entry into the United States by fraud or willful misrepresentation. The applicant is the daughter of a naturalized U.S. citizen parent 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 father.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 26, 2005.

In support of the appeal, counsel for the applicant submits a brief, dated November 17, 2005. 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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...

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. These 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.

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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

Counsel first contends that the applicant’s U.S. citizen parent will suffer extreme financial and physical hardship were the applicant removed from the United States. As stated by the applicant,

...My father has been under my care since he came to U.S. in 1992. He lives with me in the house I own....

My father solely depends on me in regards to family support, shelter, finances, home maintenance, and participation in medical care. I earn \$62,400.00 per year as a registered nurse. My father’s income of \$810.00 per month from social security is not enough for him to live on. I pay \$1,271.05 per month to cover the mortgage on the house. I pay for all living expenses, including the rent, groceries, clothing....

My father speaks very limited English. Every time he needs to speak to his doctor I do accompany him in order for him to express himself well and relate to the doctor his current condition....

Declaration of [REDACTED] dated December 7, 2004.

To begin, it has not been established that the applicant, a registered nurse, would be unable to find a similar position in the Philippines that would allow her to assist her father in the United States financially. Nor has any evidence been provided regarding the applicant’s father’s current financial situation and his needs, to establish that without the applicant’s continued financial support, his hardship will be extreme.

Moreover, no documentation from a medical professional has been provided that details the applicant’s father’s current medical conditions, the short and long-term treatment plans, the gravity of the medical conditions, and what specific assistance he needs from the applicant in particular.

Finally, the record indicates that the applicant has U.S. citizen siblings that reside in the same city and state as the applicant and her father. No evidence has been provided by counsel to explain why the applicant's siblings would be unable to assist the applicant's father with respect to his financial and physical care, should the need arise, were the applicant removed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record fails to establish that the applicant's father's continued physical and financial care and survival directly correlate to the applicant's physical presence in the United States. While the applicant's father may need to make alternate arrangements with respect to his finances and his continued physical care, it has not been established that any new arrangements would cause him extreme hardship.

Counsel further contends that the applicant's U.S. citizen parent will suffer extreme emotional hardship were the applicant removed from the United States. As stated by the applicant's father,

...since my wife passed away in 1999, I have been under the care of my daughter. We have formed the closest father-daughter bond imaginable. I depend on [REDACTED] the applicant] to keep me alive and always have something to look forward to; our time together....

...To be separated from my daughter, [REDACTED] would be a great deal of hardship for me.

To deny me of the company and loving care of my daughter [REDACTED] would be a devastating blow to my life. I am more afraid of that than any of the fears I had in my whole life....

Affidavit of [REDACTED] dated December 7, 2004.

No documentation has been provided that establishes that the applicant's father will experience extreme emotional hardship due to the applicant's absence. Documentation such as a mental health evaluation from a licensed professional that has evaluated the applicant's father and can attest to the extreme emotional hardship he will face were the applicant removed from the United States, to further support the gravity of the situation, has not been provided. Moreover, it has not been established that the applicant's father would be unable to travel to the Philippines for extended periods, to visit his daughter. Finally, it has not been established that the applicant's siblings are unable to provide the emotional support that the applicant's father may need while the applicant resides abroad.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and

child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). While the AAO sympathizes with the applicant's father, his situation, if he 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 based on the record.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, no reasons have been provided for why the applicant's father is unable to accompany the applicant to the Philippines, his birth country, or any other country of their choosing.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen parent would suffer extreme hardship if she were removed from the United States, and moreover, the applicant has failed to show that her U.S. citizen parent would suffer extreme hardship were he to relocate to another country with the applicant were she removed. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.