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U.S. Citizenship
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FILE:

Office: SAN FRANCISCO, CA

Date: **AUG 31 2006**

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C)(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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and was before the Administrative Appeals Office (AAO). On May 10, 2001 the AAO dismissed the applicant's appeal of the District Director's denial of the Form I-212 Application for Permission to Reapply for Admission and rejected the Form I-601 waiver of inadmissibility. On October 29, 2002 the applicant filed an amended petition for a writ of habeas corpus to the United States District Court for the Northern District of California. The District Court granted the petition for a writ of habeas corpus and remanded the case to the AAO for review of the applicant's Form I-601 waiver petition, as the AAO had failed to address the applicant's U.S. citizen parents as qualifying relatives. The AAO will sua sponte reopen the Form I-601. In addition, the AAO will withdraw its previous decisions and approve the I-601 waiver application and the I-212 Application for Permission to Reapply.

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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and both her mother and father are naturalized U.S. citizens. 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 parents, spouse, and their two young U.S. citizen children.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 19, 2000.

On appeal, counsel contends that the applicant is not inadmissible and that her qualifying relatives would suffer extreme hardship if the applicant returned to the Philippines. Counsel placed special emphasis on the deteriorating health of the applicant's mother, noting that she is increasingly dependent upon the applicant. *Form I-290B*, dated June 8, 2001; *Attorney's brief*, dated September 6, 2001.

In support of these assertions, counsel submits a brief dated September 6, 2001 and supporting exhibits A – JJJ. Briefs dated February 15, 2001 and April 24, 2001 submitted by the applicant's former attorney are in the record. The record also includes, but is not limited to, declarations from the applicant as well as her spouse, mother, and father; documents evidencing the applicant's medical condition; documents evidencing the applicant's mother's medical condition; U.S. birth certificates for the applicant's two children; earnings summary and tax statements for the applicant and her spouse; letters from the applicant's siblings, in-laws, friends, and co-workers; employment letters; country condition reports on the Philippines; petition signed by the applicant's friends, neighbors, co-workers, and relatives; Philippine birth certificate for the applicant; marriage certificate for the applicant and her spouse, dated May 26, 1996; divorce certificate for the applicant's spouse, dated August 16, 1983; divorce certificate for the applicant's spouse, dated February 19, 1993; naturalization certificates for the applicant's spouse, mother, and father; and a Record of Sworn Statement.

Prior to addressing whether the applicant qualifies for a Form I-601 extreme hardship waiver, the AAO finds it necessary to address the issue of inadmissibility mentioned in counsel's brief. A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the

particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* Counsel asserts that the applicant timely retracted her misrepresentation by declaring at the airport that the passport in her possession was false. *Attorney's brief, p.12-13.* According to the record, the applicant was one of 10 Philippine nationals intercepted at Gate 29 by INS inspectors. The applicant, along with the other Philippine nationals, possessed altered U.S. passports. All of these passengers claimed to be the person shown in the U.S. passport, and claimed they were indeed U.S. citizens. Upon questioning while under oath, the applicant refused to give a statement. *Record of Sworn Statement, September 20, 1990.* As the record does not document a timely retraction of the applicant's misrepresentation, the AAO finds the applicant inadmissible.

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.

(ii) Falsely claiming citizenship.—

(I) In general.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law 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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 himself 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 spouse, mother and father. 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 while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30,

1996, the eligibility to apply for a waiver. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

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 age of a qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals.

The applicant's qualifying relatives consist of her U.S. citizen mother, U.S. citizen father, and U.S. citizen spouse. Extreme hardship to any of the Applicant's qualifying relatives must be established in the event that he or she resides in the Philippines or in the United States, as the qualifying relative is not required to reside outside of the United States based on denial of the applicant's waiver request.

The analysis requires the applicant to establish extreme hardship to her U.S. citizen mother in the event that she resides in the Philippines. The applicant's mother is now an 80-year-old woman who has been living in the United States for over 20 years. *Letter written from the applicant's mother, dated July 16, 2001*. She has a U.S. citizen spouse, two U.S. citizen children, one Lawful Permanent Resident daughter, two U.S. citizen grandchildren, and her U.S. citizen son-in-law, all of whom reside in the United States. *See naturalization and U.S. birth certificates, U.S. passports, and lawful permanent residency card for the applicant's father, siblings, spouse, and children*. The applicant's mother has significant cardiovascular problems and requires close supervision for medical reasons. *Letter written by [REDACTED] C, dated June 26, 2001*. In April 2001, the applicant's mother had a cardioversion performed at Methodist Hospital which was unsuccessful in that she has remained in atrial fibrillation which will be permanent. *Doctor's report, [REDACTED], dated June 19, 2001*. According to the applicant's mother, she was diagnosed with a heart problem, hypertension, hypothyroidism, and frequently suffers from pneumonia. *Letter from the applicant's mother, dated July 16, 2001*. Her current condition is getting worse, she gets tired very easily,

and she is having problems breathing normally. *Id.* She must now visit her doctor on a weekly basis to check up on her health condition. *Id.* Health care in the Philippines is poor, and the applicant's mother may not be able to find suitable medical care if she resided there. *See Declaration of the applicant's spouse, dated December 4, 2000 addressing health care in the United States as compared with the Philippines; See Also Ex. HHH, "Philippines-Health: Poverty Deals a Deadly Dose of Measles," by [REDACTED] World News Inter Press Service, February 11, 1997; Ex. III, "Tuberculosis, Strategy & Operations, Country Profiles: The Philippines," World Health Organization.* Although each factor alone does not rise to the level of extreme hardship, the AAO finds that, cumulatively, the applicant's mother has demonstrated that she would suffer extreme hardship if she resided in the Philippines due to her significant health condition, the lack of suitable medical care in the Philippines, her numerous family ties, and her elderly age.

The analysis requires the applicant to establish extreme hardship to her U.S. citizen mother in the event that she resides in the United States. As previously noted, the applicant's mother has significant health conditions that need attention. The applicant has taken on the role of one of her mother's caregivers. *Letter from the applicant's mother, dated July 16, 2001.* According to Dr. [REDACTED] the applicant's mother would benefit greatly if the applicant were permitted to become a permanent resident in the United States so that the applicant may help provide assistance with her mother's daily needs. *Letter written by [REDACTED] FACC, dated June 26, 2001.* The AAO notes that although the applicant has siblings who live in the United States, the applicant's assistance in caring for her elderly parents is needed and the entire family depends upon one another. *Letter written by the applicant's sister, dated July 11, 2001.* The applicant prepares her mother with special food on a daily basis. *Letter from the applicant's mother, dated July 16, 2001. See Also letter from the applicant's mother, undated.* She reminds her mother to take her medicine, does laundry for her, and accompanies her on regular walks. *Letter from the applicant's mother, undated.* The applicant's mother is retired and receives a \$450 per month pension from Social Security. *Letter from the applicant's mother, undated.* The applicant buys her mother the medication she needs on a frequent basis, and provides her mother with approximately \$100 per month to supplement her personal expenses. *Letter from the applicant's mother, undated.* Additionally, as of age 74, the applicant's mother had been living with the applicant for over three years. *Letter from the applicant's mother, undated.* If the applicant departs the United States, her mother would not have any place to live. *Letter from the applicant's mother, undated.* The applicant's mother would be impacted financially if her daughter departed the United States. The AAO finds that, when looked at in the aggregate, the applicant's mother has shown that she would suffer extreme hardship if she resided in the United States based on her significant health conditions, her elderly age, her financial dependency upon the applicant, and being separated from her daughter.

As the applicant has demonstrated that her U.S. citizen mother would suffer extreme hardship upon her removal, there is no need to analyze the other qualifying relatives.

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 she now seeks a waiver, and periods of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to her U.S. citizen mother if she were refused admission, her long-term and supportive relationship with her U.S. citizen spouse and two U.S. citizen young children, her positive relationships with her family, friends, and co-workers as evidenced by their affidavits, and her lack of a criminal record.

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. The AAO also withdraws its previous decision on the Form I-212 and for the same reasons noted above, grants that application as a matter of discretion.

ORDER: The previous decisions are withdrawn. Both the I-601 waiver application and the I-212 application for permission to reapply for admission are granted.