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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MANILA, PHILIPPINES Date: NOV 18 2005

IN RE: [redacted]

PETITION: 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 PETITIONER: SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, Manila, Philippines, 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 by a consular officer to be inadmissible to the United States pursuant to 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 to the United States by fraud or willful misrepresentation. The applicant is the son of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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.

The acting immigration attaché 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 Acting Immigration Attaché*, dated March 8, 2004.

On appeal, the applicant's mother asserts that she is suffering extreme medical and financial hardship. She further contends that the decision of the acting immigration attaché failed to consider whether or not the applicant's misrepresentation was material. *Form I-290B*, dated April 6, 2004. In support of these assertions, the applicant's mother submits a brief, dated April 29, 2004; a declaration of the applicant's mother, dated April 29, 2004 and copies of medical records for the applicant's mother. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on August 28, 1995, the applicant attempted to procure admission to the United States by providing fraudulent information to a consular officer of the United States in applying for a visitor visa.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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:

> (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.

The applicant's mother contends that the decision of the acting immigration attaché failed to consider whether or not the misrepresentations made by the applicant were material as required under section 212(a)(6)(C)(i) of the Act. *Petitioner Constance Albano's Appeal of Decision Re: Beneficiary Julius Albano's I-601 Application for Waiver of Ground of Excludability*, dated April 29, 2004. The applicant's mother indicates that the applicant misstated his occupation and income in applying for a tourist visa in 1995 and contends that these facts were not material to his application under the "often used test" which finds that "a misrepresentation can be considered material if the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility that might well have resulted in a proper determination that the alien not be admitted." *Id.* at 4 (citing Matter of S- and B-C-, 9 I&N Dec 432 (Att'y Gen. 1961)). The AAO finds that the applicant's mother is correct in her citation to the rule of probability, but errs in asserting that application of that test results in a finding that the applicant's misrepresentations were not material. In reviewing an application for a visitor visa, a consular officer considers the likelihood of whether or not the applying alien will abide by the terms of the visa and return to his home country as required; information pertaining to an applicant's occupation and income are material to a determination of whether or not he qualifies for a visitor visa. The U.S. Department of State Foreign Affairs Manual addresses this issue:

> Frequently, a question arises concerning the effect of ineligibility of a false document presented in support of an application ... which purports to establish a fact which is material to the application for a visa, but which ... is so poorly crafted ... as to lack credibility. Despite the lack of credibility, if the document ... is offered for the purpose of establishing a fact which would be material if the information in the document ... were to be accepted as truthful, the consular officer may consider that the document ... "tends" to cut off a line of inquiry.

9 FAM 40.63 (2005).

The applicant's mother fails to support her assertions with evidence to the contrary. The applicant's mother cites *Herrera Roca v. Barber*, 150 F.Supp 492 (N.D.Cal 1957) for the proposition that a nonimmigrant's misstatements should be disregarded if they are irrelevant and he is otherwise eligible for the nonimmigrant status sought. As evidenced by the decision of the consular officer in 1995 the applicant's situation is distinguishable from the one presented in *Herrera Roca*; information pertaining to the applicant's employment and income is not irrelevant and the applicant was not otherwise eligible for the visa he sought. The applicant's mother also cites *Matter of Box*, 10 I&N Dec. 87 (BIA 1962) in which a misstatement as to place of birth was found not to be material. The applicant's misrepresentations regarding his occupation and income are distinguishable from a misstatement regarding one's place of birth for the reasons discussed *supra*.

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 that suffered by the applicant's parent. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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.

The applicant's mother states that she is 72 years old and living in the twilight of her life. *Petitioner Constance Albano's Appeal of Decision Re: Beneficiary Julius Albano's I-601 Application for Waiver of Ground of Excludability* at 9. She indicates that she has been residing in the United States for over twenty years. *Id.* She contends that she subsists on her pension and Social Security payments and that she suffers from hypothyroidism, hypertension, osteoporosis and severe back problems. *Id. See also Letter from Lorraine Lee, MD*, dated April 15, 2004. The applicant's mother further states that she has experienced sleeplessness and depression since learning of the applicant's inadmissibility. *Id.* The applicant's mother indicates that it would be impossible for her to relocate to the Philippines in order to be with the applicant owing to the lack of quality health care in the applicant's home country and her advanced age. *Id.* The AAO notes that the submitted documentation merely describes the circumstances of the applicant's mother and fails to reflect how the presence of the applicant would serve to alleviate any hardship in the life of the applicant's mother. According to the statements of the applicant's mother and the medical records submitted, the medical conditions of the applicant's mother appear to be controlled through medication. *Id.* ("...she continues to take medications for [sic]...she continues to take Fosamax...). Although the record indicates that the applicant's mother experiences a limited budget owing to her status as a retired person, the record fails to establish that the presence of the applicant is required in order for the applicant's mother to subsist. *See Declaration of Constance C. Albano*, dated April 29, 2004.

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* 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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's mother endures hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion 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 he 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.