U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 17 2006

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:

[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 District Director, Los Angeles, California, denied the waiver application, and it 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 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident of the United States. 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 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 November 8, 2004.

The record reflects that, on January 6, 1991, the applicant obtained admission to the United States by presenting a fraudulent Philippine passport and U.S. nonimmigrant visa. On June 12, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen mother. On December 3, 2002, the applicant appeared at CIS' Los Angeles District Office. The applicant admitted to procuring admission to the United States by fraud in 1991.

On November 8, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On November 8, 2004, the district director issued a notice of denial of the application because the applicant had procured admission to the United States by fraud or willful misrepresentation of a material fact and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel contends that the district director failed to consider the applicant's mother's medical and psychological conditions as factors in determining whether the applicant's mother would suffer extreme hardship. *See Applicant's Brief* dated December 17, 2004. In support of his contentions, counsel submitted the above-referenced brief, as well as a psychological report and medical documentation for the applicant's mother. The entire record was reviewed and considered in rendering a decision on the appeal.

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.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted use of a fraudulent passport and U.S. nonimmigrant visa to procure admission into the United States in 1991. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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 at 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 alien 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. 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). (Citations omitted).

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 record reflects that the applicant's mother, [redacted] is a native of the Philippines who became a lawful permanent resident of the United States in November 1989. The applicant is in his 30's, Ms. [redacted] is in her 60's, [redacted] owns her own business and has health concerns.

Counsel asserts that [redacted] would suffer extreme hardship if she were to remain in the United States without the applicant [redacted] in her affidavit, states, [redacted] s the only one working and taking care of the financial needs." However, [redacted] affidavit also states that her son, [redacted] owns the house in which she an [redacted] eside and that she started a small business in 1996. [redacted] notes that, [redacted] helps me by picking up the clothes for my Dry Cleaning Business . . . [and] covers additional responsibilities at [her] business whenever [her] high blood pressure prevents [her] from working." There is no evidence in the record, apart from [redacted] affidavit, to support the assertion that the applicant is the main financial support for his mother. There are no tax returns, payment slips or W-2s indicating what the applicant's income is or what are the expenses for the household. Counsel provides a certificate of disability and/or return to work or school note from [redacted] indicating that [redacted] was seen on one occasion and diagnosed with hypertension, insomnia and a mild increase in triglycerides. The note contains no prognosis for [redacted] diseases and does not indicate that she requires ongoing treatment or that assistance from the applicant is required for [redacted] to function on a daily basis. The medical letter lacks detail in regard to the affiant's familiarity with [redacted] and there are no other medical documents to suggest that [redacted] suffers from any physical illnesses. Counsel provides a psychological report for [redacted] indicating "it appears she [redacted] has been depressed most of her life." While the psychological report indicates that [redacted] should seek treatment for her Major Depressive Disorder, the record does not contain evidence that [redacted] has received psychological treatment or evaluation other than during the two appointments used to write the psychological report and that, while [redacted] indicated she had requested anti-depressants from her physician in the past, she has not received psychotherapy or psycho pharmaceutical treatment in the past. Additionally, the AAO notes that the psychological report was conducted after the Form I-601 was denied and that [redacted] made no mention of any psychological problems in the affidavit, which she submitted with the Form I-601. The psychological report indicates that [redacted] was hospitalized due to gastrointestinal problems that resulted in her cardiac arrest in 1994. However, there is no other evidence in the record to indicate that this incident was associated with [redacted] 's depression or what her prognosis was at that time or whether this is a current health concern for [redacted] which may be affected by the removal of the applicant. There is no evidence in the record, besides the psychological report and doctor's note, that [redacted] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, the record indicates that [redacted] has family members in the area, who, while they do not currently render her assistance, may be able to provide her with emotional and financial assistance in the absence of the applicant.

Counsel does not contend that [redacted] would suffer hardship if she were to return to the Philippines with the applicant. [redacted], in her affidavit, does not assert that she would suffer hardship if she were to return to the Philippines. However, the psychological report states, "it would create an extreme hardship for [redacted] if [the applicant] . . . were to be sent back to the Philippines, whether she went with him or whether she stayed . . . if she went to the Philippines, her son would need to work and no one would be available to look after her physical and medical needs . . . [and] psychiatric medications and treatments are very expensive." As discussed above, the evidence in the record does not indicate that [redacted] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, the AAO notes that, as a lawful permanent resident of the United States, 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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted]vill face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a child is removed from the United States. 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 point made in this and prior decisions on this matter is that 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 section 212(i) of the Act, 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his lawful permanent resident mother as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.