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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

H2

[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: AUG 21 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

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 Acting Immigration Attache, Manila, Philippines. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed and the previous decision of the AAO will be affirmed. The application will be denied.

The applicant is a native and citizen of Fiji who seeks admission to the United States pursuant to a diversity visa. She was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude (larceny). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to enter the United States and reside with her lawful permanent resident (LPR) mother.

The Acting Immigration Attache concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of Acting Immigration Attache*, dated April 7, 2004. The AAO affirmed the Acting Immigration Attache's decision on appeal. *Decision of AAO*, dated October 20, 2005.

In the present motion to reopen and reconsider, counsel maintains that the matter should be "reopened because of new evidence, specifically, the enclosed statement from [redacted]" Counsel maintains that the statement from [redacted] the applicant's brother, provides details concerning the serious mental and physical disabilities suffered by the applicant's mother and presents new facts showing that neither he nor his siblings are able to provide the care she needs from the applicant.

[redacted] contends in his affidavit that his mother's condition is potentially life threatening without someone to provide her with constant care and supervision. He states that only the applicant is able to provide this care. He indicates that he cannot care for his mother because of his employment. He also states that he cannot afford to hire a professional caregiver. He asserts that neither of his three other siblings living in the United States can care for the applicant's mother because of other family commitments and/or because they live too far away. The AAO notes that subsequent to filing the present motion, counsel has submitted information concerning general instability in Fiji following a military coup and letters from the applicant's family members (not including her mother) indicating their fear for her safety there.

Although [redacted] statement presents new facts that warrant reopening the matter, the AAO finds that these assertions are nonetheless insufficient to establish extreme hardship to the applicant's mother and to overcome the reasons given in the AAO's previous decison for denying the waiver application.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the only relative that qualifies is the applicant's mother. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme

hardship to a qualifying relative. The 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals 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 further, however, that 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, 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.

On the present motion, counsel has submitted evidence to show that the applicant's mother experiences hardship without the applicant to assist her in the United States. The information referred to by [redacted] concerning his mother's medical condition was considered by the AAO in rendering its previous decision. The AAO stated in its October 20, 2005 decision:

> Counsel asserts that the applicant's mother's medical conditions require the applicant's presence in the United States. The record contains psychological and medical evaluations pertaining to the applicant's mother. While the evidence suggest that it would be beneficial to the applicant's mother if the applicant were near her, there is nothing in the record that establishes that, without the applicant's presence, her mother is suffering or will suffer extreme hardship.

[redacted] has provided explanations as to why he and other family members, for financial and other reasons, cannot provide adequate care to his mother. He has asserted that only the applicant can provide this

care. While [redacted]'s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence showing that he and his siblings are unable to provide, and cannot hire a healthcare professional to provide, adequate care for their mother. *See Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Thus, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her lawful permanent resident mother as required under section 212(h) of the Act. 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(h), the burden of establishing that the application merits approval 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 motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the Attache and the AAO will be affirmed. The application will be denied.