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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: DEC 04 2007

IN RE: Applicant: [redacted]

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:

[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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, 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 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 procured entry into the United States by fraud or willful misrepresentation; the record indicates that the applicant presented a passport and a B-2 visa belonging to another individual when seeking admission to the United States on September 19, 1990. The applicant's mother is a lawful permanent resident. The applicant thus 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 May 18, 2004.

In support of the appeal, counsel for the applicant submits a brief, dated July 6, 2004; a psychological evaluation from [redacted] dated June 25, 2004, in regards to the applicant's mother; and a duplicate copy of an affidavit from the applicant's mother, dated April 2, 2004. 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...

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's mother is the only qualifying relative, and hardship to the applicant or his

siblings cannot be considered, except as it may affect the applicant's mother. 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).

[redacted] 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 San Francisco 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 mother will suffer extreme emotional hardship were the applicant removed from the United States. As stated by the applicant's mother, "...I heavily depend on my son Efren [the applicant] emotionally. Since I do not have friends my age here in the United States and all of my sons and daughters are busy with their own family and children, [redacted] is the only one who have (sic) time to talk and spend quality time with me. We talk about our lives and dreams. We have become soulmates and best friends..." [redacted] dated April 2, 2004.

In support of the emotional hardship referenced by the applicant's mother in her affidavit, counsel provides a psychological evaluation from [redacted] Psychologist. [redacted] expresses, "..[redacted] is expected to experience significant emotional hardship if [redacted] [the applicant] was unable to remain in this country due to her advanced age and multiple medical problems. [redacted] identifies [redacted] as her primary source of emotional support...The evaluation finds that [redacted] is experiencing an Adjustment Disorder which is a serious mental disorder, and that the fear that her son may not remain in this country with her is a significant cause of the disorder..."*Evaluation from Thomas Neill, Ph.D., Licensed Psychologist,* dated June 25, 2004.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's mother and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's mother. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do

not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO recognizes that the applicant's parent will endure hardship as a result of separation from the applicant. However, her situation if she 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. 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). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), 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.

Counsel further contends that the applicant's mother will suffer extreme financial hardship were the applicant removed from the United States. As stated by counsel, the applicant's mother "...heavily depends on the Applicant financially. Again, since all of her other sons and daughters have their own financial obligations with their own family, the Applicant is the only who mainly supports her financially..." *Brief in Support of Appeal,* dated July 6, 2004.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Counsel provides no explanation for why the applicant would be unable to find gainful employment in the Philippines that would allow him to assist his mother in the United States financially. Nor has any evidence been provided regarding the applicant's mother's current financial situation and her needs, to establish that without the applicant's continued financial support, her hardship would be extreme.

Finally, counsel asserts that the applicant's mother will suffer physical hardship were the applicant removed. As stated by the applicant's mother, "...I heavily depend on my son [redacted] [the applicant] physically. I suffered a stroke in 1987 and had a bypass surgery in 2001. All of my eleven (11) sons and daughters are here in the United States and most are either United States citizens or U.S. green card holders. All of them are married and have their own family except my daughter [redacted] and son [redacted] is a very busy dentist who runs her own dental clinic, so it is only my son [redacted] who can take care and look after me....He also runs all my errands, such as picking up medication, taking me to my doctors, church, grocery, exercise, etc..." *Supra* at 1.

No documentation from a medical professional has been provided that details the applicant's mother's current medical condition, her short and long-term treatment plans, the gravity of her medical condition, and what assistance she needs from the applicant in particular. Moreover, the record indicates that the applicant's mother has ten children, in addition to the applicant, who reside in the United States. She lives with one of her sons and his wife, and their three children, ages 10 to 21 years of age. The AAO notes that the applicant's mother has numerous family members nearby and in her own household; counsel has not provided corroborating evidence that documents that the applicant's mother's children and grandchildren would be unable to assist the applicant's mother 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)). While the applicant's mother may need to make alternate arrangements with respect to her daily care, it has not been established that such arrangements would cause the applicant's mother extreme hardship. As such, the record fails to establish that the applicant's mother's continued medical care and survival directly correlate to the applicant's physical presence in the United States.

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. Counsel contends that the applicant's mother, 80 years old at the time the appeal was filed, will experience extreme emotional, financial and medical hardship were she to relocate with her son to the Philippines. However, counsel provides no corroborating evidence of the hardships referenced in his brief.

To begin, counsel asserts that the applicant's mother "...will become very poor and destitutes (sic) in the Philippines. As such, most likely she will have to live in the slums..." *Supra at 9.* No evidence is provided by counsel that verifies that the applicant will be unable to obtain gainful employment in the Philippines, thereby permitting him to support his mother. Moreover, counsel states that if the applicant's mother relocates to the Philippines, she "...will be unnecessarily exposed to these health dangers...She won't be able to afford going to a hospital, see a doctor or buy medicine..." *Supra* at 9. No evidence has been provided that verifies that the applicant's mother will be unable to obtain appropriate medical treatment in the Philippines, her birth country, should the need arise. Finally, it has not been established that the applicant's mother's children and grandchildren would be unable to visit the applicant's mother in the Philippines on a regular basis, thereby ensuring that the applicant's mother maintains familial contact. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534

(BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his lawful permanent resident mother would suffer extreme hardship if he were removed from the United States. 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.