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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: JUN 09 2009

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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 admission to the United States through fraud or misrepresentation of a material fact. The applicant is the daughter of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her mother.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *See Decision of District Director* dated June 26, 2006.

On appeal, counsel for the applicant states that the applicant's mother would suffer extreme emotional, physical, and financial hardship if the applicant were removed to the Philippines. Specifically, counsel asserts that the applicant's mother suffers from significant medical conditions that prevent her from working and cause her to rely on the applicant for financial support, and she would suffer emotional hardship if the applicant were removed and they were separated from each other. *See Brief in Support of Appeal* at 2, 6. Counsel further contends that the applicant's mother would face hardship if she relocated to the Philippines with the applicant because she would not have access to adequate medical care. *Brief* at 2-3. In support of the waiver application and appeal counsel submitted income tax returns for the applicant, her mother, and her sister; a letter from the applicant's employer; a medical report from the applicant's mother's doctor; and affidavits from the applicant and her mother. The entire record was reviewed and considered in arriving at 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.

Section 212(i) of the Act provides:

> (1) The [Secretary] may, in the discretion of the [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 [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 of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish 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.

In the present case, the record reflects that the applicant is a forty-five year-old native and citizen of the Philippines who was admitted to the United States in November 1991 after presenting a passport and U.S. visa belonging to another individual. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's mother is a sixty-nine year-old native and citizen of the Philippines and Lawful Permanent Resident. The applicant resides in Fremont, California and her mother resides in Elmhurst, New York.

Counsel asserts that the applicant's mother would suffer extreme hardship if she relocated to the Philippines with the applicant. In support of this assertion, she submitted a medical report from the applicant's physician and quoted excerpts from a U.S. Department of State Consular Information Sheet stating that "even the best hospitals in the Philippines may not meet the standard of medical

care, sanitation, and facilities provided by hospitals in the United States." *See Brief* at 3. The Bureau of Consular Affairs further states,

> Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full. *U.S. Department of State, Country Specific Information -- Philippines*, February 6, 2009.

A letter from the applicant's mother's doctor states that she suffers from multiple medical conditions including hypercholesterolemia, chronic leg edema and lower back pain (osteoarthritis), a history of Graves basedow disease, a history of anxiety and depression, mixed hyperlipidemia, and Diabetes uncomplicated Type 2 uncontrolled. *See Medical Report from* [redacted] dated November 10, 2008. The letter further states that she is taking several medications and her blood pressure, cholesterol, thyroid, and diabetes are under constant monitoring and surveillance since she is prone to heart attack. It appears that in light of her medical condition and the poorer quality and expense of medical care in the Philippines, as well as difficulty in readjusting to life in the Philippines after residing in the United States for over twenty years, relocating to the Philippines would result in hardship that when considered in the aggregate, rises to the level of extreme hardship for the applicant's mother.

Counsel additionally asserts that the applicant's mother would suffer extreme hardship if the applicant were removed and she remained in the United States. Counsel states that the applicant's mother suffers from various medical conditions and relies on the applicant for financial support, and would suffer financial hardship if the applicant were removed from the United States. As noted above, the letter from the applicant's mother's doctor states that she suffers from various medical conditions. *See Medical Report from* [redacted] dated November 10, 2008. [redacted] further states that the applicant's mother requires assistance because her medical conditions limit her daily activities, she continues to be anxious and depressed despite taking medications for these conditions, and that these conditions are related to a fear of being separated from the applicant.

Documentation on the record supports assertions by the applicant's mother that she suffers from significant medical conditions that limit her ability to work and support herself financially. Income tax returns submitted with the appeal indicate that the applicant's mother earned $48,928 in 2002 but only about $6600 in 2003 and did not work in 2004. In her affidavit, the applicant's mother states that her medical conditions limited her ability to work and she has not worked since 2003. *See Declaration of* [redacted] dated November 7, 2008. She further states that she resides with her daughter [redacted] who assists her with her daily activities, but that the applicant provides for most of her financial needs, including her share of the rent and utilities and medical expenses not covered by Medicare and Medicaid. *Id.* She states that [redacted] does not earn enough to contribute to her financial assistance and her other two children residing in the United States are not able to

assist her financially because one is married and the other is a student. *Id.* Income tax returns for the applicant and her sister indicate that the applicant earned $36,238 in 2007 as well as $15,287 in IRA distributions and her sister [redacted] earned $35,791 in 2007 and $38,634 in 2006. The applicant provided no evidence, such as income tax returns or information on employment and living expenses, to support the assertion that her two brothers in the United States would be unable to contribute to the financial support of her mother. Further, the applicant's sister is employed and does not have any other dependents to support, and the record is insufficient to establish that she is unable to contribute any financial support to her mother.

The applicant's mother additionally asserts that she has no one to turn to except for [redacted] and the applicant, and the applicant also provides her with moral support and communicates with her frequently and allays her fears and consoles her. *See Declaration of* dated November 7, 2008. Further, as noted above, the applicant's mother's physician states that she suffers from depression and anxiety and had been prescribed medications for these conditions, which appear to be exacerbated by fear of separation from the applicant. The input of any medical or mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the physician treating the applicant's mother for her various medical condition states that she has a history of depression and anxiety related to the applicant's immigration situation, the letter does not list any current medications or other treatment for these conditions, and there is no indication that she has been referred to a mental health professional for further evaluation or treatment.

The evidence does not establish that any emotional hardship the applicant's mother is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of the continued separation from her daughter. Although the depth of her concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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 exists. Further, the AAO notes that the applicant's mother has continuously resided in New York and the applicant has resided in California since August 1993. The applicant and her mother already live separately and have resided a great distance apart from each other for several years, which undermines the claim that her mother would experience extreme emotional hardship as a result of being separated from her.

The financial and emotional hardship the applicant's mother would experience if she remained in the United States appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, 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 has failed to establish extreme hardship to her Lawful Permanent Resident mother as required under section 212(i) of the Act.

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. In addition, the Form I-212 was properly denied as no purpose would be served in granting permission to reapply for admission as the applicant is otherwise inadmissible. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.