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U.S. Citizenship and Immigration Services

H3

[redacted]

FILE [redacted] Office: MANILA, PHILIPPINES Date: FEB 20 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of the Philippines, entered the United States in July 1990 as a nonimmigrant visitor for pleasure, with permission to remain for six weeks, yet remained until March 2002, when she departed the United States. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in March 2002. The applicant was thus found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to be able to reside in the United States with her lawful permanent resident mother.

The officer in charge 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge,* dated October 26, 2006.

In support of the appeal, the applicant submitted a travel document, issued to her by the Philippine Consulate General, dated February 27, 2002 and a letter from the applicant's mother's treating physician, dated November 22, 2006. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

References are made to the hardships the applicant's U.S. citizen daughter, born in 1973, will face were the applicant's waiver not granted. Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) 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 lawful permanent resident parent is the only qualifying relative, and hardship to the applicant, her spouse, her children and/or her siblings cannot be considered, except as said hardships may affect the applicant's mother.

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.

> 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 applicant asserts that her lawful permanent resident parent will suffer extreme physical and emotional hardship if her inadmissibility waiver is not granted. As she states,

> My mother who is in California is severely ill and in a bedridden situation. She broke her legs and she's been under operation this year and she's physically deteriorating her strength for the surgery that she's been though. Given the chance, I want to see her and able to hold and take care of her.....

Supplement to the Form I-601

A letter from the applicant's mother's treating physician corroborates her medical conditions and notes that she is suffering from depression associated with her medical condition and the prolonged nursing home stay. *Letter from* [redacted], dated November 22, 2006. While the AAO

recognizes that the applicant may have played an important role in her mother's well-being, the record establishes that the applicant departed the United States in 2002, four years before the letter was written by [redacted], contending that the applicant is needed to take care of all of her mother's needs. The letter thus 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. Moreover, the record indicates that the applicant's mother has a vast support network in the United States, including three adult children, grandchildren and great-grandchildren; no documentation has been provided to establish that they are unable to assist the applicant's mother should the need arise, as they have presumably been doing since the applicant departed the United States in 2002. 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)).

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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 familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

The AAO recognizes that the applicant's mother 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. Thus, the AAO concludes that it has not been established that the applicant's lawful permanent resident mother will suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to her inadmissibility.

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. In this case, no reasons have been provided for why the applicant's mother is unable to relocate to the Philippines, her home country, to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident mother would suffer extreme hardship if she were unable to reside in the United States, and moreover, the applicant has failed to show that her lawful permanent resident mother would suffer extreme hardship were she to relocate abroad due to the applicant's inadmissibility. The record demonstrates that the applicant's mother faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties

arising whenever an adult daughter is refused admission. 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(a)(9)(B)(v) 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. The waiver application is denied.