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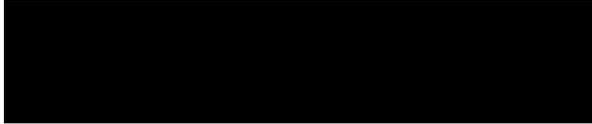
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
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U.S. Citizenship
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FILE:



Office: LOS ANGELES, CALIFORNIA

Date: **AUG 31 2007**

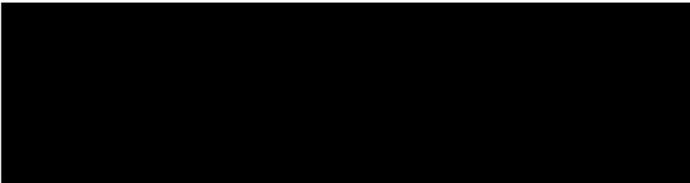
IN RE:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States. The record indicates that the applicant is the son of a lawful permanent resident of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), in order to reside in the United States with his lawful permanent resident mother.

The District Director stated that the applicant was seeking a waiver under section 212(h) of the Act and found that he failed to establish that extreme hardship would be imposed on the applicant's mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated September 27, 2005. The AAO notes that the District Director did not state the ground of inadmissibility, but she referred to section 212(h) in her decision, so it assumed the District Director found the applicant inadmissible for a criminal conviction.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's admission into the United States would result in extreme hardship to his lawful permanent resident mother. *Brief in Support of Appeal*, page 2, filed October 26, 2005.

The AAO finds that the District Director erred in finding the applicant inadmissible for criminal grounds, since there is no evidence that the applicant has been arrested and/or convicted of a crime. However, the AAO does find the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport and visa under someone else's name.

In the present application, the record indicates that the applicant entered the United States on December 30, 1993, by using a passport and B2 nonimmigrant visa under someone else's name. On September 14, 1994, the applicant's mother, [REDACTED], filed a Form I-130 on behalf of the applicant. On February 10, 1995, the Form I-130 was approved. On June 3, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 22, 2004, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On September 27, 2005, the District Director denied the Form I-601, finding the applicant failed to demonstrate extreme hardship to his lawful permanent resident mother. On November 15, 2005, the District Director denied the Form I-485. On December 8, 2005, the applicant filed a Motion to Reopen the Form I-485 decision. On December 20, 2005, the District Director granted the motion to reopen.

The record includes, but is not limited to, counsel's brief, declarations and affidavits from the applicant and his mother, a letter from [REDACTED] and other medical documentation regarding the applicant's mother's medical conditions. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) In general.-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, in pertinent part, that:

- (i) (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...

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident 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).

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.

Counsel asserts that the applicant's lawful permanent resident mother would face extreme hardship if the applicant were removed to the Philippines. *Brief in Support of Appeal*, page 2, *supra*. Counsel claims that

the applicant's mother "has always been dependent" on the applicant, and "will not only suffer extreme mental anguish but will suffer financially as well." *Id.* at 3. Counsel claims the applicant's mother is suffering "emotionally while waiting for a decision" on the applicant's immigration status. *Id.* The AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant's mother's mental, emotional, and/or psychological health has been affected by the applicant's immigration status. [REDACTED] diagnosed the applicant's mother with Hypertension, Hypercholesterolemia, Osteoarthritis, Osteoporosis, Right Rotator cuff tear, and Diabetes Mellitus Type II. *Letter from* [REDACTED] *Santo Tomas Medical Clinic*, dated October 12, 2005. [REDACTED] states the applicant's mother takes various medications for her medical conditions. *Id.* The AAO notes that [REDACTED] did not state that the applicant's mother could not receive treatment and/or prescriptions for her medical conditions in the Philippines. Further, there is no indication that the applicant's mother has to remain in the United States to receive her medical treatments and/or prescriptions. The AAO notes that the applicant's mother is a native of the Philippines, who spent her formative years in the Philippines, and it has not been established that the applicant and his mother have no family in the Philippines. The AAO finds that the applicant failed to establish extreme hardship to his mother if she accompanies him to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's lawful permanent resident mother if she remains in the United States, in close proximity to her other children and access to adequate health care. As a lawful permanent resident, 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 applicant's mother states the applicant helps her financially. *Declaration of* [REDACTED], dated October 22, 2005. The AAO notes that the applicant indicates he works as a realtor. The applicant failed to establish that he provides any kind of financial support for his mother. Furthermore, it has not been established that the applicant's two siblings, who are adults and reside near their mother, could not help their mother financially. The applicant's mother states her son, [REDACTED] "has a family of his own to support. He made it clear that I am not his responsibility and that he has nothing to do with me. He has abandoned me." *Id.* However, the applicant submitted U.S. Individual Income Tax Returns (Form 1040) for [REDACTED], the applicant's brother, which demonstrated that the applicant's brother claimed the applicant's mother as a dependent for the 2001 – 2004 tax years. The record fails to demonstrate that the applicant will be unable to contribute to his mother's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's lawful permanent resident 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. 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 application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility 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 appeal will be dismissed.

ORDER: The appeal is dismissed.