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U.S. Citizenship  
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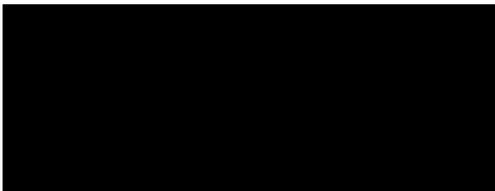
Applicant:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Officer-in-Charge, Manila, Philippines, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of excludability pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to travel to the United States and reside with his U.S. citizen father and mother.

The Acting Officer-in-Charge concluded that the applicant 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 Acting Office-in-Charge*, dated June 8, 2005.

On appeal, counsel for the applicant contends that the applicant's parents and siblings will suffer extreme hardship if the applicant's waiver of inadmissibility is denied. Counsel contends that the health of the applicant's father, who is 80 years old, is deteriorating, and the submitted *National Vital Statistics Report* reveals that the average age for Americans is 77.2 years of age. Thus, counsel states that the applicant's father does not have many years in which to live. Counsel states that the applicant's father has suffered emotionally due to his separation from the applicant for 18 years, even though he has other children in the United States. Counsel states that the applicant's father will be buried in the United States and the applicant will be unable to pay his respects to his father. Counsel indicates the importance of family unification in immigration policy and in the cases of *Cerrillo-Perez v. INS*, 809 F.2d 1419 (9<sup>th</sup> Cir. 1987), *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998), and *Mejia-Carrillo v. United States INS*, 656 F.2d 520 (9<sup>th</sup> Cir. 1981). Counsel asserts that the applicant deserves favorable discretion for his voluntarily departure from the United States after his unlawful entry when he was 21 years of age, and his decision to stay outside of the United States for 18 years. Counsel indicates that it is inhuman to continue to punish the applicant for a relatively harmless offense, and that the penalty is not proportionate to the offense.

The record contains the brief from counsel; an affidavit from the applicant's father, his mother, and from the applicant; documents from the United States Embassy in Manila, Philippines; an affidavit from [REDACTED]; a marriage contract; a copy of the applicant's father's naturalization certificate; a copy of a birth certificate; copies of baptism certificates; the Form I-601 and its supplement; medical records relating to the applicant's father; a letter from [REDACTED] M.D., concerning the applicant's father; and the document entitled "*National Vital Statistics Reports*" (Volume 51, Number 5, March 14, 2003); and other documents. 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.

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 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 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 record reflects that on or about July 1984, the applicant willfully procured a tourist visa by fraud (assuming another identity) and submitting official Philippine government documents (i.e. a passport) in order to enter the United States. The applicant therefore entered the United States by making a willful misrepresentation of a material fact in order to procure entry into the United States. Accordingly, the applicant 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).

On appeal, counsel contends that the applicant's procurement of a tourist visa by fraud was a "relatively harmless offense" and that the penalty is not proportionate to the offense. Counsel, however, does not cite to any legal authority to support his assertions. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, counsel's claim that the applicant's misrepresentation was a "relatively harmless offense" that does not merit the penalty of inadmissibility is not persuasive in light of the clear language of section 212(a)(6)(C) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 deportation is irrelevant to section 212(i) waiver proceedings. The only relevant hardship in the present case is hardship suffered by the applicant's parents; the hardship to the alien's siblings is not relevant. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

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).

U. S. courts have 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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in the assessment of hardship factors in the present case.

The record contains an affidavit from the applicant's father and as well as an affidavit from his mother. The applicant's parents stated that they have three naturalized citizen children who are residents in the United States. *Affidavit from Applicant's Father* at 2, dated January 18, 2005, *Affidavit from Applicant's Mother* at 2, dated January 18, 2005. The applicant's mother stated that she is 74 years old and in failing health, and that she cannot travel. *Id.* at 1. The applicant's parents stated in their affidavits that they are no longer able to work and that they live solely on money from social security, which is not enough to pay for food, medication, clothing, and recreation. They stated that the applicant promised to live with them and help pay the rent, food, and other bills. *Id.* at 1, 2. The applicant's father indicates that he is 79 years old and is in failing health, and cannot travel because of an enlarged prostate gland. He indicates that he may never be able to see his son again. *Id.* at 1. They stated that they entered the United States in early 1980. *Id.* at 1.

The record contains medical records relating to the applicant's father. The officer-in-charge found that these records convey that the applicant's father has had health problems for which he was, or is, being treated and that they do not indicate that his condition is deteriorating. *Decision of the Acting Office-in-Charge*, dated June 8, 2005. The AAO agrees. In 1997, the applicant's father underwent surgery for an enlarged prostate; the surgery was successful. His June 11, 2002 operation to remove cysts was successful. *Glendale Adventist Medical Center Operation Report*, dated June 11, 2002. The March 9, 2002 examination did not indicate that the health of the applicant's father deteriorated. *Glendale Adventist Medical Center Procedure Number 0370106*. The Final Report regarding a follow-up examination on March 31, 2005 indicated that there was no significant change from a prior February 27, 2004 examination of the applicant's father. The applicant's father underwent surgery on March 1, 2004 for his prostate, which was successful. *Glendale Adventist Medical Center Operation Report*, dated March 1, 2004. The operation/procedure reports indicate that the applicant's father underwent successful cataract surgery on December 2, 1998 and April 7, 2005. *Glendale Adventist Medical Center Operation Report*. Collectively, the medical records do not support the applicant's assertion that his father's health is deteriorating. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Accordingly, the applicant has not shown that his parents' health requires his assistance, such that they will experience significant physical hardship if the applicant's waiver of excludability is not granted.

The applicant's parents indicated that the applicant will assist them financially if he is able to live with them in the United States. His parents state that they are not able to meet all of their expenses with their money from social security. *Affidavit from Applicant's Father* at 1 and 2, dated January 18, 2005; *Affidavit from Applicant's Mother* at 1 and 2, dated January 18, 2005. The applicant indicates that if his waiver is granted,

he will live with his parents and help them financially so that they will not rely on social security payments from the government. He further states that he will assist his parents with driving and errands. *Supplement to Form I-601*.

The record contains one document, a consultation dated March 1, 2004, in which [REDACTED] M.D., indicates that the applicant's father "didn't take the medication due to some financial problems." The affidavits from the applicant's parents did not provide any specific details about their financial circumstances, and there is no independent evidence, other than the March 1, 2004 consultation record, corroborating the assertion that the applicant's parents cannot meet their economic needs without the applicant's assistance. There is no evidence showing that the applicant's siblings in the United States cannot financially assist their parents. 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 AAO lacks sufficient documentation to assess the true economic condition of the applicant's parents.

The applicant's parents expressed that they will experience extreme emotional hardship if the applicant's waiver is not granted. Counsel states that Congress and case law, *Cerrillo-Perez*, *Salcido-Salcido*, and *Mejia-Carrillo*, have indicated the importance of family unity. The AAO finds counsel's assertion is not persuasive in that these cases do not establish a *per se* finding of extreme hardship based on family separation alone. Rather, these cases indicate that the specific circumstances and facts of the particular case must be analyzed so as to determine whether the statutory requirement of "extreme hardship" has been met. A review of *Mejia-Carrillo*, a suspension of deportation case, indicates that hardship to the alien was considered; here, hardship to the alien is not under consideration. Furthermore, even within the context of a suspension of deportation case, the Ninth Circuit Court in *Mejia-Carrillo* did not state that separation from family alone establishes extreme hardship: it stated that separation from family alone **may** establish extreme hardship. The Ninth Circuit Court in the case did not analyze or make a finding regarding whether the applicant's separation from family established extreme hardship; the case was remanded to the BIA for consideration of all the non-economic hardship factors, including separation from family. *Salcido-Salcido* is a suspension of deportation case in which hardship to the alien and the alien's two U.S. citizen children, and permanent resident husband were considered. *Id.* at 1293. With our case, hardship only to the applicant's parents is under consideration. In *Salcido-Salcido*, the Ninth Circuit Court stated: "[t]he hardship to a citizen or permanent resident child may be sufficient to warrant suspension of the parent's deportation." (Citation omitted.) However, the Ninth Circuit Court in a footnote to this quotation indicated that one factor may be insufficient to constitute "extreme hardship." The Ninth Circuit Court states:

Further, we have recognized that while one factor by itself may be insufficient to constitute "extreme hardship," that factor, when considered cumulatively with other relevant factors, may constitute hardship that is sufficiently unusual to be "extreme." *See, e.g., Prapavat v. INS*, 662 F.2d 561, 563 (9th Cir.1981) (finding abuse of discretion where BIA failed to consider cumulative effect of all relevant factors such as existence of U.S. citizen children, minimal economic opportunities for suitable employment in an underdeveloped country, and citizen child's lack of knowledge of the country's language).

*Id.* at 1293. In *Salcido-Salcido*, the Ninth Circuit Court found that the BIA failed to consider the factor of separation and consequently remanded the case to the BIA. *Id.* at 1294. It is noted that the Ninth Circuit

Court did not analyze or make a determination as to whether the alien's separation from her family constituted extreme hardship.

In *Cerrillo-Perez*, a suspension of deportation case, the Ninth Circuit Court stated that in determining extreme hardship, the BIA should have considered the hardship to the alien and to the alien's "spouse, parent, or child who is a citizen of the United States." *Id.* at 1421. With our case, only hardship to the alien's parents is under consideration. The Ninth Circuit Court states that the BIA should have considered in its decision the resulting hardships in both alternatives in a deportation case: the citizen children accompanying their parents and the citizen children remaining in this country. The Ninth Circuit remanded the case to the BIA as it failed to consider the hardship that would result if the citizen children were to remain in this country. *Id.* at 1427. The Ninth Circuit Court did not analyze or make a determination as to whether the aliens' separation from their children constituted extreme hardship.

As discussed above, the Ninth Circuit Court's holdings in *Cerrillo-Perez*, *Salcido-Salcido*, and *Mejia-Carrillo* require that the hardship resulting from family separation be analyzed. With the case here, the AAO will consider whether the applicant's parents will endure extreme emotional hardship as a result of separation from the applicant.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez* at 1423, citing *Bastidas v. INS*, 609 F.2d 101 (3<sup>rd</sup> Cir. 1979). However, U.S. court decisions have also held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

With the present case, the Acting Officer-in-Charge found that the applicant's exclusion, and the resulting stress and anxiety that it would cause, was not sufficient to outweigh the significant negative factors in the record. The applicant's parents expressed that that "[b]ecause of my age and infirmity, I will never be able to see my son Aristeo again, before I die, unless he is allowed to legally come to the United States." The AAO notes that the record contains no medical records or other evidence to support the claim that the applicant's parents will experience extreme emotional hardship if separated from the applicant. The AAO notes that although the applicant's parents have been separated from the applicant for 15 years, the record contains no medical records or other evidence reflecting that they have endured extreme emotional hardship as result of their separation. The AAO recognizes that the applicants' parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. It is noted that in the affidavits of the applicant's parents indicate that they will not be alone in the United States as they have adult sons and a daughter residing here.

The AAO will now consider whether the applicant's parents will experience extreme hardship if they were to join their son in the Philippines. The applicant's parents were born in the Philippines and lived there until the early 1980s. There is no indication that they will be unable to adjust to life in the Philippines. The applicant's parents are on a fixed income, receiving social security benefits; no evidence in the record

indicates that they will no longer receive these benefits if they relocated to the Philippines. The applicant submitted no evidence in the record about the quality of health care in the Philippines or its social, economic, and political conditions. Absent such evidence, the AAO cannot conclude that any hardship experienced as a result of relocation to the Philippines would be extreme. Although the applicant's parents would be separated from family members and customary life in the United States if they relocated to the Philippines, the record does not support a conclusion that the hardship of this separation would be beyond that which is normally experienced in most cases of removal or inadmissibility.

All prospective hardships to the applicant's parents have been considered separately and in aggregate. Based on the foregoing, the instances of hardship that will be experienced by the applicant's parents should the applicant's waiver of excludability be denied, considered in aggregate, do not rise to the level of extreme hardship. 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) 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.