



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 23 2008**

IN RE: [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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 into the United States by fraud or willful misrepresentation on February 14, 1988. The applicant is son of U.S. citizen parents and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record did not support a finding that the applicant's parents would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the Director*, dated October 6, 2006.

On appeal, counsel asserts that the applicant's parents would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. *Counsel's Brief*, dated November 27, 2006.

The record indicates that on February 14, 1988 the applicant presented a Filipino passport and nonimmigrant visa, neither of which has been issued to him, to enter into the United States. *Applicant's Affidavit*, dated April 7, 2006.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual

case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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). 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).

The AAO notes that extreme hardship to the applicant's parents must be established in the event that they relocate to the Philippines and in the event that they reside in the United States without the applicant, as they are not required to relocate outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his parents in the event that they relocate to the Philippines. The record indicates that the applicant's parents are nearly 90 years old, many, if not all, of their children reside in the United States and they suffer from various medical problems. The record includes a letter from the applicant's parent's physician. [REDACTED] states that the applicant's parents have been under his medical care. *Letter from [REDACTED]* dated April 7, 2006. He states that the applicant's father has been diagnosed with prostate cancer, diabetes mellitus and angina. He also states that the applicant's father's cancer and diabetes mellitus are closely monitored, he has undergone radiation treatment and he recently had a pacemaker implanted in March 2006. The applicant's mother has been diagnosed with coronary artery disease, for which she had open-heart surgery and is also closely monitored. [REDACTED] states that she has also been diagnosed with hypertension and osteoarthritis. [REDACTED] recommends that the applicant's parents receive 24-hour medical monitoring, which he states the applicant is currently providing. *Id.* In a separate letter, [REDACTED] also states that he does not recommend international travel for the applicant's parents at this time. *Letter from [REDACTED]* dated October 31, 2005. The applicant's parents state in their affidavits that they have been living in the United States since 1979 and that if they were to relocate to the Philippines they would not be able to obtain the medical care they need and they would fear for their safety. *Parents' Affidavits*, dated November 2, 2005. The AAO finds that due to the applicant's parents' ages, length of residence in the United States, family ties to the United States and medical conditions, relocation to the Philippines would result in extreme hardship.

The applicant must also establish that his parents would suffer extreme hardship in the event that they remain in the United States, separated from the applicant. Counsel states that the applicant is a trained vocational nurse and cares for his parents from 9:00 a.m. to 5:00 p.m. everyday. *Counsel's Letter*, dated November 27, 2006. Counsel states that the applicant has been his parents' caretaker since 1990. He further states that although the applicant's parents have six other children who live in the United States, the applicant is the only child with medical training as well as the work schedule to care for his parents. *Id.* In support of these assertions, the record includes an affidavit from the applicant, an affidavit from the applicant's mother, an affidavit from the applicant's father, an affidavit from one of the applicant's siblings, and a letter from the applicant's employer. The applicant's mother and father state that the applicant cares for them from 9:00 a.m. to 5:00 p.m. and monitors their medication and blood pressure and, in his father's case, his glucose levels. They state that the applicant is the only family member able to care for them because their other children work during the day and have to be with their own families in the evening. *Parents' Affidavits*, dated November 2, 2005. The applicant's employer states that the applicant works at the La Habra Convalescent Hospital from 11:00 p.m. to 7:30 a.m. five days a week and is an excellent employee. *Letter from Employer*, dated October 31, 2005. The applicant's sister states that she works from 7:00 am to 3:00 pm and cannot care for her parents during the day and that all of her other siblings are also employed during the day. *Letter from [REDACTED]*, dated April 10, 2006. The applicant states that he is with his parents on a daily basis, monitoring their conditions from 9:00 am to 5:00 pm. *Applicant's Affidavit*, dated April 7, 2006. He also states that his sister cares for his parents after 5:00 pm. *Id.* The AAO notes that the record does not establish that in the absence of the applicant, the applicant's parents could not be monitored by other family members. The medical record submitted by [REDACTED] does not state that the applicant's parents require monitoring by a medical professional. The record establishes that the applicant's parents are cared for in the evening hours by the applicant's sister, who is not a trained medical professional. In addition, the record does not establish that the applicant's four other siblings are unavailable to care for their parents or that they are not able to hire someone to care for their parents. Furthermore, no evidence was submitted to support the assertions made by the applicant's parents regarding the possible deterioration in their health because of the applicant's removal. Thus, the current record does not establish that the applicant's parents would suffer extreme hardship as a result of the applicant's inadmissibility.

U.S. 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, *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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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(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.