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U.S. Department of Homeland Security
20 Mass. Avenue, NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: SEP 11 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 District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 entry into the United States by fraud or willful misrepresentation. The applicant is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her mother.

The District Director 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 Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 17, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to her qualifying relative as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from counsel; a statement from the applicant's mother; statements from the applicant's sister; a statement from the applicant; medical records and statements for the applicant's mother; and employment letters, Form W-2s, and earnings statements for the applicant. 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 June 27, 1992 the applicant was admitted to the United States on a B-2 nonimmigrant visa under the false name of [REDACTED]. *Form I-94, Departure Record*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality 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. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's mother if the applicant is removed. Any hardship to the applicant's child will be considered only to the extent that it affects the applicant's mother. If 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 Board of Immigration Appeals 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's mother must be established in the event that she resides in the Philippines or in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request.

If the applicant's mother travels with the applicant to the Philippines, the applicant needs to establish that her mother will suffer extreme hardship. The applicant's mother was a citizen of the Philippines who became a naturalized United States citizen on March 28, 1997. *Naturalization certificate*. The applicant's mother is currently 81 years old. *Id.* Her spouse is deceased. *Statement from the applicant's mother*, dated December 8, 2004. The applicant's mother has had numerous health issues as documented by medical records, including lumbar discogenic disease with radiculopathy, osteoarthritis of the knees and hypertension. *Letter from [REDACTED], Colorado Family Health Center, Glendale, California*, dated July 16, 2004. The applicant's mother also has had an abnormal echocardiogram report and has a history of suffering from diabetes, high blood pressure, and musco-skeletal problems. *Medical History, [REDACTED]*. She continues to be under the care of a physician in California. *Letter from [REDACTED], Colorado Family Health Center, Glendale, California*, dated July 16, 2004. While counsel has failed to address whether the applicant's mother would be able to receive sufficient medical care in the Philippines, the AAO acknowledges the advanced age of the applicant's mother, the medical conditions from which she suffers and the impact that the disruption of long-established medical treatment may have on her health. When looking at the aforementioned factors and the significant amount of time the applicant's mother has resided in the United States, the AAO finds that the applicant demonstrated that her mother would suffer extreme hardship if she were to reside in the Philippines.

If the applicant's mother resides in the United States, the applicant needs to establish that her mother will suffer extreme hardship. The applicant has been the sole caregiver of her mother. *Statement from the applicant*, dated September 14, 2004. *See Also letter from [REDACTED], Colorado Family Health*

Center, Glendale, California, dated July 16, 2004. The applicant's mother suffers from a variety of medical ailments. *Id.*; *See medical records for the applicant's mother*. According to the applicant's mother, she wants to live in a house with the child with whom she can get along and who can spend time with her and attend to her daily needs. *Statement from the applicant's mother*, dated December 8, 2004. The applicant's mother is unable to live with her other daughter, the applicant's sister, for a number of reasons. Their values, priorities and ways of life are different, and their feuds have escalated since the death of the applicant's father as he served as a pacifier between the applicant's mother and her other daughter. *Statement from [REDACTED]*, *the applicant's sister*, dated December 8, 2004. The applicant's sister has three jobs and is unable to take her mother to her doctor's appointments or to visit the grave of her father. *Id.* The applicant's sister also notes that she lives far away, and having her mother in her house would cause her mother's social activities with her friends to be cut off. *Id.* This may cause her mother to become depressed. *Id.* While the applicant's mother has family in the United States, her remaining in the United States would cause her to be separated from the applicant, who is her caregiver. This case resides in the 9th Circuit where *Salcido-Salcido* placed much emphasis on the detrimental effects of family separation. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). The AAO also acknowledges the age and health of the applicant's mother and how they may affect her ability to travel to visit the applicant in the Philippines. The applicant's mother notes that now that her husband is deceased, she is afraid to be alone and needs somebody that she can depend upon. *Statement from the applicant's mother*, dated December 8, 2004. She feels that she is already on the verge of depression from the death of her husband and is afraid to face another loss in her life. *Id.* When looking at the aforementioned factors, particularly the advanced age of the applicant's mother, her significant health conditions, and the impact of separating her from her sole caregiver, the AAO finds that the applicant demonstrated that her mother would suffer extreme hardship if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which she now seeks a waiver and periods of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to her mother if she were refused admission, her long-term and supportive relationship with her mother, her long-term lawful employment in the United States, her lack of a criminal record, her U.S. citizen daughter, and the Form I-130 filed on her behalf.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.