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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 16 2008**

IN RE: Applicant: [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:



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 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 entry into the United States by fraud or willful misrepresentation; the record indicates that the applicant presented a passport and a B-2 visa belonging to another individual when seeking admission to the United States in March 1998. The applicant's mother and father are naturalized U.S. citizens. The applicant thus 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 parents.

The 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 Director*, dated April 25, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated May 23, 2006. 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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...

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) 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 U.S. citizen mother and father are the only qualifying relatives, and hardship to the applicant cannot be considered, except as it may affect the applicant's parents. 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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.

This matter arises in the California Service Center, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has 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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

Counsel first contends that the applicant's U.S. citizen mother and father will suffer extreme physical and emotional hardship were the applicant removed from the United States. As stated by the applicant's father,

...I currently suffer from Diabetes and High Blood Pressure, which require regular visits to monitor my progress....

Because of my current medical conditions, I live with [REDACTED] the applicant], who is my primary caretaker. I do not drive and as such, I depend on [REDACTED] to take me to appointments with my physician or accompany me on my errands. In March, 2005, I had cataract surgery. [REDACTED] had to take time off work to drive me to the doctor for the operation. [REDACTED] is also responsible for filling my prescriptions and ensuring that I take the proper dosage for my medication.

[REDACTED] is my youngest child and only immediate relative in the United States, apart from my wife and son, [REDACTED] who lives with his family in West Covina.... Naturally, I am extremely close to my youngest child and depend on her for emotional support.

I am feeling depressed, anxious, and stressed over the prospect of being separated from [REDACTED]. Because I live with [REDACTED] I am accustomed to seeing and

interacting with her on a daily basis. [REDACTED] removed to the Philippines, I would feel an emotional void that can never be filled....

My battle with hypertension may also prevent me from visiting [REDACTED] upon her permanent relocation to the Philippines. I may have difficulty physically enduring the long international airplane ride to the Philippines. Removal of [REDACTED] from the United States would effectively eliminate any possibility that I would see her again with any consistency, once she leaves. The quality of our relationship would be compromised....

Because I am seventy-three years old, I recognize my own mortality, especially given my current medical condition. During my sunset years, I desire to be close to my daughter geographically so that we could spend quality time together.... I depend on [REDACTED] as my caregiver and emotional provider....

Affidavit of [REDACTED] dated December 21, 2005.

An affidavit from the applicant's U.S. citizen mother echoes the sentiments expressed above. In addition, in support of the emotional hardship referenced by the applicant's parents in their affidavit, counsel provides an evaluation from [REDACTED] expresses,

.. [REDACTED] [the applicant's mother] is suffering from severe depression as each passing day she gets closer to the day that her daughter may need to return to the Philippines. She is suffering from sleep disturbance due to excessive worry and frequently awakens in the middle of the night, unable to fall back to sleep. She stated that she is consumed with this issue constantly and the stress and depression have impacted her appetite to the point that she has already lost a few pounds. She cries frequently....

[REDACTED] [the applicant's father] echoed his wife's sentiments. In addition, he is panicked and worried about his blood pressure and diabetes being exacerbated. He is experiencing severe headaches and can not get these troubling thoughts out of his head....

[REDACTED] feel depressed, stressed, and scared....

...these factors indicate the strong likelihood of acute stress reaction and have resulted in profound depression, sleep disturbance, anxiety, health problems, and fear in [REDACTED]. Their emotional responses appear to be intensifying and this situation has exacerbated already compromised health conditions....

Evaluation from [REDACTED], L.C.S.W., dated December 30, 2005.

Although the input of any health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's parents and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's parents. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

In addition, while the applicant provided letters from her parents' treating physician, the letters are vague and do not explain the parents' current medical situation, the gravity of the situation, the short and long-term treatment plans, what specific assistance they need from the applicant, and what hardships they would face were the applicant to relocate abroad. Moreover, no documentation has been provided from a physician that confirms the applicant's parents' statements that they would be unable to visit the applicant in the Philippines regularly due to their medical conditions. Finally, it has not been established that the applicant's U.S. citizen brother is unable to provide the emotional and physical support that the applicant's parents may need while the applicant resides abroad. 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)). While the applicant's parents may need to make alternate arrangements with respect to their daily care, it has not been established that such arrangements would cause the applicant's parents extreme hardship.

The AAO recognizes that the applicant's 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 removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal 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.

Counsel further contends that the applicant's parents will suffer extreme financial hardship were the applicant removed from the United States. As stated by counsel,

...She [the applicant] is solely responsible for the mortgage payments and other daily living expenses, which the couple is incapable of paying. They [the applicant's parents] rely on her on a daily basis....

...The Service's contention that [REDACTED] [the applicant] can continue to provide financial support for her parents from the Philippines is, once again, contrary to

the evidence in the record. mortgage payment alone is \$1,192. Considering the weak economic condition in the Philippines, there is absolutely no support for the Service's assertion that [REDACTED] could continue to support her parents financially if removed to the Philippines....

Brief in Support of Appeal, dated May 23, 2006.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

To begin, no documentation has been provided that outlines the applicant's parents' current financial situation and their needs, to establish that without the applicant's continued presence in the United States, their hardship would be extreme. Moreover, counsel provides no objective documentation that confirms that the applicant, a registered nurse, would be unable to find gainful employment in the Philippines that would allow her to assist her parents in the United States financially. Counsel provides information about country conditions in the Philippines, but it is general in nature and doesn't confirm that the applicant herself would be unable to obtain gainful employment. Finally, it has not been established that the applicant's U.S. citizen sibling is unable to assist his parents financially should the need arise. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, the record fails to establish that the applicant's parents' continued medical care and survival directly correlate to the applicant's physical presence in the United States.

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. The applicant's parents contend that relocating to the Philippines to reside with the applicant will compromise their health. However, no objective documentation has been provided that outlines, in detail, what specific hardships the applicant's parents would face were they to relocate to the Philippines, their home country, or any other country of their choosing, to reside with the applicant. As previously stated, assertions without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen parents would suffer extreme hardship if she were removed from the United States. 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(i) 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.