

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H2

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO Date:

APR 2

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Griskom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco. The applicant appealed the decision of the district director to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is again before the AAO pursuant to a motion to reopen the proceeding.<sup>1</sup> The motion will be granted and the matter will be reassessed. The prior decision of the AAO will be affirmed and the application will be denied.

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 inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The district director 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 2, 2001. Upon review, the AAO dismissed the appeal based on a finding that the applicant failed to show extreme hardship to her U.S. citizen mother. *Decision of the AAO*, dated March 23, 2004.

On motion, counsel for the applicant contends that the applicant's misrepresentation of her true name and identity was not material, and thus she is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief in Support of Motion*, dated September 17, 2004. Counsel asserts that, in the alternative, the applicant has established that her mother will experience extreme hardship if the present waiver application is denied. *Id.*

The record contains, in pertinent part, briefs from counsel; reports on conditions in the Philippines; statements from the applicant, the applicant's mother, and the applicant's brothers; copies of birth certificates for the applicant, the applicant's daughter, and the applicant's brothers; tax, employment, and financial documents for the applicant, the applicant's mother, and the applicant's brother's family; immigration documents for the applicant's relatives; a copy of the applicant's mother's naturalization certificate and U.S. passport; copies of medical documents for the applicant's mother; a psychological evaluation for the applicant's mother; a letter from the applicant's mother's church, and; a sworn statement from the applicant regarding her acquisition and use of a passport under a false name. The entire record was reviewed and considered in rendering this decision.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also

---

<sup>1</sup> Although counsel for the applicant states in his brief that the present filing is a motion to reopen, he asserts that the AAO applied an erroneous standard of law to the application. Thus, the motion will be examined as a motion to reconsider.

establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel has asserted that the AAO applied an erroneous standard of law in the present matter. Counsel cites legal authority to support his contentions. Thus, counsel has sufficiently asserted that the AAO's prior decision "was based on an incorrect application of law or Service policy" to warrant reconsidering the matter. 8 C.F.R. § 103.5(a)(2). The motion to reconsider will be granted and the matter will be reexamined.

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 the applicant was the beneficiary of a Form I-130 petition for alien relative filed by her mother on her behalf. She testified that in 1988 she obtained a passport under the alias [REDACTED] from a travel agency in Manila. *Record of Sworn Statement*, dated June 6, 2001. She stated that she used the name [REDACTED] because she feared that if she tried to obtain a U.S. visa to visit her mother in Guam, she would be refused due to having an immigrant petition filed on her behalf. *Id.* at 1. She explained that [REDACTED] was her grandmother's favorite name, and her family members called her "[REDACTED]." *Id.* The applicant testified that she used the passport in her assumed name to obtain a B visa, yet she did not tell the U.S. Embassy that she had an immigrant petition filed on her behalf. *Id.* She provided that she was issued a visa, and used it to visit her mother in Guam in 1990 and 1992. *Id.* She stated that she used the passport to enter the United States in 1992 and has not left the country since. *Id.*

The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act 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.

On motion, counsel contends that the applicant's use of her nickname was not an intentional misrepresentation. *Brief in Support of Motion* at 7-8. Counsel further asserts that the misrepresentation was not material, and thus the applicant is not inadmissible under section

212(a)(6)(C)(i) of the Act. *Id.* at 4. Specifically, counsel suggests that the applicant would have been granted a B nonimmigrant visa had she revealed her true name and intent to immigrate to the United States. *Id.* at 4, 7-9. Counsel contends that the decision in *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (A.G. 1961), supports that an applicant's misrepresentation of her identity is not material if she would have received the benefit sought with her true identity. *Id.* at 6-7. Counsel asserts that U.S. Citizenship and Immigration Services (USCIS) Operating Instruction 245.3 provides that an applicant can be granted adjustment of status in the exercise of discretion notwithstanding the fact that the applicant entered the United States as a nonimmigrant with a preconceived intention to remain, and thus the applicant's true intent to reside in the United States permanently did not disqualify her from eligibility to adjust her status. *Id.*

Upon review, the applicant has not shown that she was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel suggests that the applicant's misrepresentation was not willful, as she merely used her nickname. Yet, the applicant's prior sworn statement clearly reflects that she intentionally used an alias in an effort to circumvent the immigration laws of the United States. The applicant explained that she feared she would not be granted a nonimmigrant visa if she revealed her true name and the fact that she was a beneficiary of an immigrant petition. Accordingly, the applicant's misrepresentation was willful.

As correctly observed by counsel, the AAO must determine whether the applicant's misrepresentation was material to her eligibility for the benefit she sought. However, counsel cites a USCIS operating instruction pertaining to an applicant's eligibility for adjustment of status. In the present matter, the applicant made a willful misrepresentation when applying for a B nonimmigrant visa and entry to the United States. Thus, the question at issue is whether the applicant would have been granted a B visa or entry in B status based on her true name, status as the beneficiary of an immigrant petition, and intent to immigrate to the United States.

The doctrine of dual intent allows applicants for certain nonimmigrant classes to have the simultaneous intentions of entering the United States for a temporary period and permanently. *See* 8 C.F.R. § 214.2(h)(16)(providing that applicant's for H status may also seek permanent residence); 8 C.F.R. § 214.2(l)(16)(providing that applicant's for L status may also seek permanent residence). However, no such doctrine applies to applicant's for B nonimmigrant status. Thus, an applicant for B nonimmigrant status must have an intent to enter the United States for a temporary period.

In the present matter, the applicant applied for a B nonimmigrant visa while she was the beneficiary of a pending Form I-130 relative petition. In her sworn statement the applicant indicated that she had an intent to immigrate to the United States at the time she applied for and used her B nonimmigrant visa. The applicant in fact entered the United States using her B visa on or about July 18, 1992 and she has not departed since. The record shows by a preponderance of the evidence that the applicant intended to remain for an indefinite when she used her B visa to enter the United States on or about July 18, 1992. Had the applicant revealed to a consular officer or inspector her intent to enter in B status and remain until she became a permanent resident, she would not have been eligible for a B visa or entry in B status.

Counsel cites the Department of State Foreign Affairs Manual at 9 FAM § 41.31, n.14, to stand for the proposition that a consular officer may properly issue a B visa to an applicant who is "registered

for immigration” if that officer is satisfied that the applicant intends to seek entry into the United States to engage in activities consistent with B-1/B-2 classification for a temporary period, and that the applicant has a residence abroad which she does not intend to abandon. Yet, given that the applicant entered the United States pursuant to her B visa and remained for an indefinite period, totaling over 16 years, the record shows by a preponderance of the evidence that she did not intend to enter temporarily in B status. By not revealing her true name and status as a beneficiary of a Form I-130 relative petition, the applicant cut off the material line of inquiry regarding her true intent in entering the United States. Had the applicant revealed an intention to enter the United States and remain for an indefinite period, a consular officer would not have had discretion to issue a B visa to her.

It is noted that the applicant made separate misrepresentations of her identity and intent when she presented herself for inspection at a U.S. port of entry. When she entered the United States on or about July 18, 1992, she represented to inspectors that she intended to enter the United States for purposes permitted in B status. She in fact never departed the United States, and remained for over 16 years. Thus, irrespective of whether a consular officer would have issued a B visa to the applicant, the applicant would not have been admitted to the United States in B status by inspectors had she revealed an intent to remain for an indefinite period.

Based on the foregoing, the applicant’s willful misrepresentation of her true name was material, as she would not have been eligible for the benefits sought, a B visa and entry in B status, based on the true facts. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act 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 requires a waiver of inadmissibility under section 212(i)(1) 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 applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant’s wife. 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 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).

On motion, counsel discusses the legal standard for extreme hardship in the present matter, and he cites appropriate legal authority to support his statement of law. Counsel does not specifically address the AAO's prior application of law with respect to extreme hardship. The only statement made by counsel that can be understood as a contention with the AAO's application of the standard for extreme hardship consists of the following: "It is an abuse of discretion to completely ignore or disregard the extreme hardship of family separation, as was done in this case." *Brief in Support of Motion* at 12. However, the prior decision of the AAO clearly shows that separation of the applicant and her qualifying relative, her mother, was considered. *Decision of the AAO*, dated March 23, 2004. The AAO examined and discussed evidence of hardship to the applicant's mother due to family separation, including a psychological evaluation, and concluded that the applicant failed to establish that family separation would result in extreme hardship to her mother. *Id.* at 4. Thus, counsel's suggestion that the AAO ignored or disregarded hardship to the applicant's mother due to family separation is not persuasive.

With the motion, the applicant presents evidence to support that her mother will experience extreme hardship should she be prohibited from remaining in the United States. The majority of the documents submitted by the applicant were previously available, already entered into the record, or contain already considered explanation and assertions. The AAO will analyze the new evidence, including: a brief letter from the applicant's mother's doctor; a letter from the applicant's mother's church, and; a new statement from the applicant's mother.

In a new statement, the applicant's mother asserts that she will experience extreme hardship if the applicant is compelled to depart the United States. *Statement from the Applicant's Mother*, dated September 15, 2004. She explains that she has strong family ties to the United States, including the applicant's daughter, cousins, nieces, nephews, and her two sons and their wives and children. *Id.* at 2. She indicates that she has resided in the United States for a lengthy duration, totaling approximately 34 years. *Id.* at 3. She states that she worked hard in the United States until she retired at age 62. *Id.* She explains that she is an active parishioner of her parish church, as supported by a letter from her church provided by the applicant on motion. *Id.*

The applicant's mother attests that she has no family or economic ties outside the United States, as all of her children are in the United States, and she has lost touch with friends and relatives in the Philippines. *Id.* She notes that she does not have properties, assets, or bank accounts outside the United States. *Id.*

The applicant's mother indicates that she requires medical check-ups, medication, and a controlled diet to keep her healthy. *Id.* at 4. She asserts that she may not be able to retain her health regimen outside the United States. *Id.* She states that she is not confident in the medical facilities in the Philippines. *Id.* at 5. She explains that she will lose her health coverage should she relocate to the Philippines, and she will not be able to afford required services. *Id.* at 5-6.

The applicant's mother expresses that she is suffering emotional hardship due to the applicant's possible departure, and that she does not wish to be separated from her. *Id.* at 4-5, 13. She explains that she is close with the applicant, and that she will endure great grief if she is unable to reside with her. *Id.* at 13. She indicates that her emotional hardship would be intensified by the fact that she would be unable to travel to visit the applicant in the Philippines, and the fact that the applicant would face bleak circumstances there. *Id.* at 12-14.

The applicant's mother asserts that she will suffer significant economic hardship if she relocates to **the Philippines, or if the applicant departs and she remains.** *Id.* at 7. **The applicant's mother** contends that she resides with the applicant and the applicant's daughter, and that the applicant pays the rent, utility bills, and grocery expenses. *Id.* She indicates that she would have no place to live if the applicant departs. *Id.* She explains that she has two sons, but that both are married with families and they do not have a spare room where she can stay. *Id.* The applicant's mother lists her monthly expenses, including rent, credit card bills, life insurance, a car payment, utility bills, and miscellaneous expenses. *Id.* at 7-8.

The applicant's mother expresses concern for conditions in the Philippines. *Id.* at 8-9. She stated that she would endure significant hardship should she relocate to the Philippines with the applicant, including economic and emotional suffering. *Id.* at 9. She indicates that she and the applicant would have limited job prospects in the Philippines. *Id.*

The applicant's mother asserts that the applicant's daughter, her grand daughter, would endure significant hardship if the applicant departs the United States. *Id.* at 10.

The applicant submitted a letter from her mother's physician, [REDACTED] Dr. [REDACTED] states that the applicant's mother has been under her care since February 2002, and that she has a history of hypertension, elevated cholesterol, intermittent labyrinthitis, osteoporosis, and diverticulosis. *Letter from [REDACTED], dated September 8, 2004.*

Upon review, the applicant has not established that denial of the present waiver application will result in extreme hardship to her mother. Section 212(i)(1) of the Act. Counsel and the applicant's mother contend that her health status will cause her hardship should the applicant depart the United States. The AAO previously examined evidence of the applicant's mother's health status, including documentation to show that she was diagnosed with arthritis, vertigo, high blood pressure, and Meniere's Syndrome. The AAO determined that the applicant's mother's medical conditions did not elevate her hardship to extreme hardship. The AAO now examines the brief letter from [REDACTED] submitted on motion. While [REDACTED] lists conditions for which the applicant's mother has received treatment, [REDACTED] did not identify whether or how these conditions impact the applicant's mother's daily life. [REDACTED] did not describe the treatment or medication the applicant's mother requires. Thus, while the AAO acknowledges that the applicant's mother suffers from health problems, the record does not show that she has ailments that cannot be treated in the Philippines, or that her care in the United States is dependent on the applicant's presence. The applicant has not established that her mother requires assistance that only she can provide, such that her mother's health would create significant hardship if the applicant departs the United States and her mother remains. The applicant's mother expressed that her medical care requires her presence in the United States, and it is assumed such care would continue should she remain.

The record reflects that the applicant's mother resides with or close to her two adult sons. The applicant has not established that her mother would be unable to obtain any required assistance from her sons should the applicant depart the United States and her mother remain. The applicant's mother previously explained that she resided with the applicant and the applicant's daughter, as well as with one of her sons and his family. *Statement from the Applicant's Mother*, dated August 24, 2001. She indicated that her other son and his family resided in the same building, two floors away. *Id.* at 2. On motion, the applicant's mother asserts that she resides with the applicant and her daughter, and that her sons do not have a room in which she could reside, suggesting that she no longer resides with one of her sons and his family. The applicant has not provided documentation to support that her mother no longer resides with one of her sons as well as with the applicant. It is observed that the applicant continues to claim the same address that she reported as of the date her mother issued her prior statement, thus the applicant has not shown that she and her mother relocated. The applicant's mother's living arrangements are material, as they reflect whether she would continue to share her residence with an adult child should the applicant depart. The AAO is unable to clearly determine whether the applicant's mother would continue to receive direct assistance from her son or sons should the applicant return to the Philippines.

The applicant's mother asserts that she would endure financial hardship should she be compelled to forego the applicant's assistance. She lists her expenses, and claims that the applicant pays for the majority of her needs. However, the applicant has not submitted sufficient documentation of her mother's claimed expenses. As noted above, the applicant has not resolved whether her mother resides with another adult child. Should the applicant's mother continue to reside with one of her adult sons, it is assumed that he would contribute to the household's expenses, thereby reducing the applicant's mother's income requirements. The applicant has not stated whether her mother has financial resources that may serve to meet any shortfall due to the applicant's absence. Thus, the applicant has not submitted sufficient evidence or explanation to show by a preponderance of the evidence that her mother will experience significant economic hardship should the applicant depart the United States and she remain.

The applicant's mother expressed that she is close with the applicant, and that she does not wish to be separated. Yet, the applicant has not provided new evidence to overcome the AAO's prior finding that her mother would not experience hardship that can be distinguished from that which is commonly expected when family members are separated due to 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.

As counsel correctly suggests, extreme hardship must be assessed on an individual basis, and applicants for waivers of inadmissibility are not in competition with one another to show the greatest hardship. Yet, the applicant must show that her mother's suffering will be greater than the common results when a close relative departs the United States due to inadmissibility. The AAO acknowledges that family separation is a serious consequence that creates significant emotional hardship. Yet, in the present matter the applicant has not shown that her mother would encounter circumstances that rise to the level of extreme hardship.

Based on the foregoing, the applicant has not shown that her mother would experience extreme hardship should the applicant depart the United States and she remain.

The applicant's mother contends that she will experience hardship if she relocates to the Philippines to maintain unity with the applicant. She notes that she would encounter economic problems due to the lack of employment, the cost of relocating, and the loss of her medical care services in the United States. She emphasizes that the loss of her health coverage and U.S. doctor care would impact her health. She provides that she has extensive family ties in the United States, and that relocating to the Philippines would cause her to lose regular contact with her family and community, resulting in emotional suffering. She expresses concern for general conditions in the Philippines, and suggests that her overall quality of life will decrease significantly. The applicant's mother cites her age as detrimental to relocating, as she has resided in the United States for a lengthy duration and returning to the Philippines would be particularly hard as an elderly woman.

The AAO acknowledges that the applicant's mother would suffer significant hardship should she return to the Philippines, largely based on her long duration and extensive contacts in the United States. It is reasonable that the applicant's mother would have challenges entering the workforce in the Philippines at age 71. Thus, considering all elements of hardship to the applicant's mother in aggregate, the AAO finds that the applicant's mother would experience extreme hardship should she relocate to the Philippines.

However, in order to establish eligibility for consideration for a waiver under section 212(i)(1) of the Act, the applicant must show that denial of the waiver application "would result in extreme hardship" to her mother. Section 212(i)(1) of the Act. As the applicant has not shown by a preponderance of the evidence that her mother would experience extreme hardship should she remain in the United States, the applicant has not established that denial of the waiver application would result in extreme hardship. *See id.* Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i)(1) 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 prior decision of the AAO will be affirmed.

**ORDER:** The motion to reconsider is granted. The prior decision of the AAO is affirmed and the application is denied.