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

U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES, CA

Date: JUL 14 2009

IN RE:

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.

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. Grissom
Acting 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 dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant's mother is a U.S. citizen. The applicant 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 applicant had 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*, at 3, dated September 28, 2005.

Prior counsel asserts that the district director erred in applying the law to the present case, and she failed to consider all of the circumstances that support the extreme hardship claim. *Brief in Support of Appeal*, at 2, dated October 25, 2004 [sic].

The record includes, but is not limited to, prior counsel's brief, prior counsel's I-601 brief, the applicant's mother's statement, and a letter from the applicant's mother's physician. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that in or around November 1990, the applicant was admitted to the United States using a Philippine passport and visa issued to another individual. Based on the applicant's misrepresentation, he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's mother.¹ Hardship to the applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. 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 whether she resides in the Philippines or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his mother in the event that she resides in the Philippines. Prior counsel states that the applicant's mother will be unable to return to the Philippines due to her long history of medical problems and age, she would not have the same level of healthcare in the Philippines, she would bear the loss of her siblings who reside in the United States, and she would suffer emotional hardship from the loss of the country that she has lived in for the past 21 years. *Brief in Support of Appeal*, at 4-5. The record includes a letter from [REDACTED], which states that the applicant's mother has a history of HTN and DM, and is currently under medical treatment. *Letter from [REDACTED]*, dated October 10, 2005. The letter is not clear as to the applicant's mother's exact medical problems, the severity of her problems, or whether her conditions require her to remain in the United States for treatment. The applicant's mother states that she has a U.S. citizen brother and a lawful permanent resident brother and sister, it would be a great hardship to leave her family in the United States, it would be a great hardship to uproot her life and find a job in the Philippines, and there is a great deal of age discrimination in the Philippines. *Applicant's Mother's Statement*, at 1-2. The AAO notes that the record is unclear as to the length of the applicant's mother's residence in the United States. In the Form G-325, Biographic Information, signed by the applicant on December 6, 2002, he listed his mother as residing in the Philippines. Moreover, the record does not establish what family members the applicant's mother

¹ The AAO notes the errors correctly pointed out by prior counsel with regard to the district director's discussion of the qualifying relative in the present case.

may have in the United States other than the applicant. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *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)).

The record does not include sufficient evidence of financial, emotional, medical or other hardship should the applicant's mother relocate to the Philippines. While the applicant's mother may encounter difficulties in the Philippines, the applicant has provided insufficient evidence that she would suffer extreme hardship as a result of relocating to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his mother remains in the United States. Prior counsel states that the applicant's mother relies on the applicant for major social support, her affidavit reflects that she would suffer psychologically if the applicant were returned to the Philippines, she suffers from poor health, she depends on the applicant to be her primary caregiver, and her health makes her especially vulnerable to any emotional trauma. *Brief in Support of Appeal*, at 3-4. Prior counsel states that visiting the applicant would not be a viable alternative as the international plane ride would be physically burdensome on the applicant's mother. *Form I-601 Brief*, at 4, dated July 20, 2005. The applicant's mother states that she relies on the applicant and his spouse very much, they visit her almost every week, she would be devastated if they returned to the Philippines, they drive her to the doctor's office, they provide emotional and financial help, the applicant's spouse cooks for her and takes care of her medications, and she has already lost one partner in life and cannot imagine going through the pain of separation from a family member again. *Applicant's Mother's Statement*, at 1. However, as the previously discussed, the record does not establish the nature of the applicant's mother's medical problems, nor indicate how they affect her ability to function on a daily basis. Neither does the record contain documentation that would distinguish the emotional impact of the applicant's removal on his mother from that experienced by others separated from family members who have been excluded from the United States. The record also offers no documentary evidence to establish how the applicant's removal would affect his mother financially. The AAO notes that many of the claims made by prior counsel and the applicant's mother are not supported with documentary evidence. The record does not include sufficient evidence of the financial, emotional, medical or other hardships that would be experienced by the applicant's mother should she be separated from the applicant. Based on the record, the AAO finds that the applicant has not provided sufficient evidence to establish that his mother would suffer extreme hardship if she were to reside in the United States without him.

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 spouse 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.