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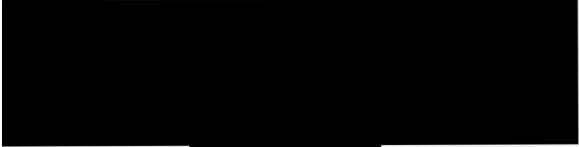
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER Date: MAR 19 2009

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:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting 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 sustained. The waiver application will be approved. The matter will be returned to the director for continued processing.

The applicant is a native and citizen of the Philippines. The record reveals that in June 1990, the applicant procured entry to the United States by presenting a passport and nonimmigrant visa belonging to another individual. The applicant was thus 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 and/or willful misrepresentation.¹ The applicant 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 his U.S. citizen mother and lawful permanent resident father.

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 November 27, 2006.

In support of the appeal, counsel for the applicant submits, *inter alia*, a brief, dated December 22, 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.

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....

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has

¹ The applicant does not contest the director's finding of inadmissibility

established extreme hardship to a qualifying relative. The 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).

This matter 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.

The applicant contends that his U.S. citizen mother and lawful permanent resident father will suffer emotional, physical and financial hardship if the applicant is removed from the United States, due to their age and medical afflictions. In a declaration the applicant's mother states that she would suffer extreme emotional hardship due to her complete dependence on the applicant. The record establishes that the applicant's mother resides with the applicant. Due to her age and medical conditions, namely arthritis and high blood pressure, she does not drive and/or work and can not care for herself, thereby requiring the applicant's assistance on a day to day basis. The applicant's mother notes that although she has a daughter who resides in the United States, said daughter is married with a child and works full-time; as such, she is not available to help her mother on a daily basis. Moreover, as her daughter does not drive, she can not take her mother to doctor's appointments or the pharmacy. *Declaration of [REDACTED]* dated January 19, 2006.

The applicant's mother further contends that her social security benefits of \$812 per month are not sufficient to cover her monthly expenses, including rent, food, utilities, medical co-payments and other necessities of life, and without her son's financial contributions, she would experience extreme financial hardship and would have to seek public assistance to support herself in her old age. *Id.* at 2. The applicant's mother also notes that were the applicant to relocate abroad, it would be impossible

for him to earn the money necessary to provide for her needs. *Id.* at 3. The applicant notes that when he lived in the Philippines, he worked as a taxi driver earning about \$94 per month. *Affidavit of [REDACTED]*, dated January 12, 2006. In the United States, he earns nearly \$2,000 per month. *See Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, for 2003.* Documentation to corroborate the applicant's mother's financial situation and medical conditions has been provided by counsel.

Were the applicant unable to reside in the United States, the applicant's U.S. citizen mother would have to care for herself on a daily basis, without the complete emotional, physical and financial support of the applicant. Moreover, country condition reports indicate that it would be difficult for the applicant to find a job in the Philippines with sufficient income to support his mother in the United States. *See U.S. Department of State Profile-The Philippines, dated October 2008.* The AAO thus concludes that the applicant's U.S. citizen mother would suffer extreme hardship were the applicant to relocate abroad while she remains in the United States. The applicant's mother needs her son's emotional, physical and financial support on a day to day basis. A separation at this time would cause hardship beyond that normally expected of one facing the removal of a child.

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 mother asserts that she could not relocate to the Philippines as she relies heavily on the affordable and quality medical treatment she receives in the United States, treatment that would be cost-prohibitive and/or unavailable to her in the Philippines, due to the substandard medical care in said country. *Supra* at 3-4. Counsel also notes the safety concerns for U.S. citizens and lawful permanent residents traveling to the Philippines.² *Brief in Support of Appeal, dated*

² The U.S. Department of State references the following security concerns for U.S. citizens and lawful permanent residents contemplating travel to the Philippines, in pertinent part:

U.S. citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those due to terrorism. While travelers may encounter such threats anywhere in the Philippines, the southern island of Mindanao and the Sulu Archipelago are of particular concern. Travelers should exercise extreme caution in both central and western Mindanao as well as in the Sulu Archipelago. For further information regarding the continuing threats due to terrorist and insurgent activities in the southern Philippines, see the Philippine Travel Warning.

Terrorist groups, such as the Abu Sayyaf Group, the Jema'ah Islamiyah and groups that have broken away from the more mainstream Moro Islamic Liberation Front or Moro National Liberation Front, have carried out bombings resulting in deaths, injuries and property damage. In November 2007, a bombing outside the House of Representatives in Metro Manila resulted in a number of deaths and injuries to bystanders. On January 3, 2008, a bomb exploded at a Cotabato City disco pub, killing one and injuring eight.

December 22, 2006. Based on the applicant's mother's documented medical conditions and the need to be treated in an affordable and effective³ fashion, and the safety concerns for U.S. citizens and lawful permanent residents in the Philippines, the AAO concludes that the applicant's U.S. citizen mother would suffer extreme hardship were she to relocate to the Philippines to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen mother would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen mother would suffer extreme hardship were she to relocate abroad to reside with the

The central and western areas of Mindanao have also experienced bombings targeting bus terminals and public buildings. While those responsible do not appear to have targeted foreigners, travelers should remain vigilant and avoid congregating in public areas; U.S. Government employees must seek special permission for travel to Mindanao or the Sulu Archipelago. When traveling in Mindanao, U.S. official travelers attempt to lower their profile, limit their length of stay and exercise extreme caution. Some foreigners who reside in or visit western and central Mindanao hire their own private security personnel.

Kidnap-for-ransom gangs operate in the Philippines and sometimes target foreigners, as well as Filipino-Americans. The New People's Army (NPA), a terrorist organization, operates in many rural areas of the Philippines, including in the northern island of Luzon. While it has not targeted foreigners in several years, the NPA could threaten U.S. citizens engaged in business or property management activities, and it often demands "revolutionary taxes."

Country Specific Information-Philippines, U.S. Department of State, dated February 6, 2009

³ As noted by the U.S. Department of State, in pertinent part:

Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full.

Country Specific Information-Philippines, U.S. Department of State, dated February 6, 2009.

applicant.⁴ Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of “extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant’s U.S. citizen mother would face if the applicant were to relocate abroad, regardless of whether she relocates to the Philippines or remains in the United States, the applicant’s apparent lack of a criminal record, community ties, long-term gainful employment, payment of taxes and the passage of more than eighteen years since the applicant’s entry to the United States by fraud and/or willful misrepresentation. The unfavorable factors in this matter are the applicant’s fraud and/or willful misrepresentation to procure entry to the United States and periods of unauthorized presence and employment in the United States.

While the AAO does not condone the applicant’s actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant’s U.S. citizen mother as a result of his inadmissibility, outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The director shall reopen the denial of the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on motion and continue to process the adjustment application.

⁴ As the AAO has found extreme hardship with respect to the applicant’s U.S. citizen mother in relation to the applicant’s request for a waiver, it is not necessary to determine if extreme hardship exists with respect to the applicant’s lawful permanent resident father.