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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: Office: MANILA , PHILIPPINES Date: JAN 07 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, Philippines 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident 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 his mother.

The Officer-in-Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge,* dated March 9, 2007.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal or Motion.*

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant; a statement from the applicant's mother; psychological evaluations for the applicant's mother; medical letters for the applicant's mother; published country conditions reports on the Philippines, a 2006 Department of State travel warning for the Philippines, articles on conditions in the Philippines; and tax statements for the applicant's mother and sister. 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 March 15, 2005 the applicant submitted fake annulment papers to a Department of State consular officer in support of his immigrant visa application.

On appeal, counsel contends that the applicant believed that the annulment documents he submitted were valid and that he was a victim of the individual who prepared them. However, the record contradicts counsel's claim as it contains a sworn statement from the applicant that establishes that, at the time he provided the annulment papers, he was fully aware that they were not genuine and that his purpose in submitting them was to establish eligibility for an immigrant visa as the unmarried son of a lawful permanent resident. *Statement to Consular Officer,* dated March 15, 2005. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to obtain an immigration benefit through fraud or the willful misrepresentation of a material fact.

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 would experience if the applicant's waiver request is denied 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 the hardship suffered by the applicant's mother if the applicant is removed. 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 whether she resides in the Philippines or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's mother joins the applicant in the Philippines, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother was born in the Philippines. *Birth certificate.* The record indicates that most of the applicant's mother's family live in the United States, but does not address what family members she may still have in the Philippines. The AAO notes that the record includes a travel warning for the Philippines issued on June 16, 2006 by the United States Department of State urging U.S. citizens to consider carefully the risks of travel to the Philippines and warning against all but essential travel throughout the country in light of heightened

threats to Westerners. *Travel Warning, Philippines, United States Department of State*, dated June 16, 2006. While the AAO acknowledges this travel warning, it notes that, as of September 17, 2009, the United States Department of State has limited its warning to the southern Philippine islands of Mindanao and the Sulu Archipelago. *Travel Warning, Philippines, United States Department of State*, dated September 17, 2009. The record does not indicate that the applicant's mother would relocate to either region.

The applicant's mother states that she was emotionally and physically devastated when she learned that the applicant's immigrant visa application was denied. *Statement from the applicant's mother*, dated July 31, 2006. She notes that she began to suffer from depression, grief, sleeplessness, and high blood pressure. *Id.* She is afraid that her emotional stress and high blood pressure will place her at risk for a heart attack or stroke and that she will not be able to get adequate medical care in the Philippines. *Id.* Psychological evaluations from a licensed mental health practitioner included in the record note that the applicant's mother suffers from major depressive disorder and separation anxiety disorder that began with the denial of the applicant's visa. *Psychological evaluation from* [redacted] dated April 10, 2007. On appeal, counsel contends that the applicant's mother would find it difficult to obtain adequate psychological care in the Philippines because of prejudice against the mentally ill and insufficient psychiatric personnel. However, the psychological evaluation of the applicant's mother indicates that her depression and anxiety are the result of her separation from the applicant, a situation that would cease to exist if she joined the applicant in the Philippines. The applicant's mother suffers from hypertension, for which she takes medication. *Statements from* [redacted], dated July 24, 2006 and July 27, 2006. Country conditions reports included in the record note that 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 in the United States. *Consular Information Sheet, Philippines, U.S. Department of State*, dated June 19, 2006. The AAO notes this information but does not find it to establish that the applicant's mother would be unable to find adequate medical care for her hypertension in the Philippines.

Counsel asserts that if the applicant's mother were to reside in the Philippines, she would lose her job and the financial support of her daughter and son-in-law who live in the United States. *Attorney's brief.* He also states that the applicant's mother does not have the necessary social connections in the Philippines to obtain employment. *Id.* The AAO acknowledges that the applicant's mother would have to seek new employment if she relocated to the Philippines but does not find the record to establish, through relevant published reports, that she would be unable to obtain such employment. Neither does the record document that the applicant's sister and brother-in-law or other family members would be unable or unwilling to financially assist the applicant's mother from the United States. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). Furthermore, the record does not show that the applicant would be unable to financially assist his mother if she joined him in the Philippines. Although the AAO notes that, during her second psychological evaluation, the applicant's mother indicated that she spent most of her earnings

helping her son, the record contains no documentation to support this claim. *Psychological evaluation from* dated April 10, 2007. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his mother if she were to reside in the Philippines.

If the applicant's mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. As previously noted, the applicant's mother was born in the Philippines. *Birth certificate*. She lives with her daughter and son-in-law in the United States, and her parents, four brothers and three sisters also live in the United States. *Statement from the applicant's mother*, dated July 31, 2006; *Attorney's brief*, dated May 1, 2007. The applicant's mother states that she was emotionally and physically devastated when she learned that the applicant's immigrant visa application was denied. *Statement from the applicant's mother*, dated July 31, 2006. She reports that she began to suffer from depression, grief, sleeplessness, and high blood pressure. *Id.* Psychological evaluations from a licensed healthcare professional included in the record note that the applicant's mother suffers from major depressive disorder and separation anxiety disorder directly caused by the impact of the applicant not being with her. *Psychological evaluation from* dated April 10, 2007. The AAO notes that the applicant's mother was initially evaluated on July 17, 2006 and had a follow-up evaluation on April 7, 2007 where a psychologist found that she continued to suffer from depression. *Psychological evaluation from* , dated April 10, 2007. The psychologist also recommended that she receive therapeutic treatment as soon as possible to regain her mental health and create a stable lifestyle. *Psychological evaluations from* dated July 20, 2006 and April 10, 2007.

The applicant's mother's doctor indicates that he has been treating the applicant's mother for hypertension, accompanied by palpitations, chest pain and shortness of breath. *Letter from* , dated April 18, 2006. He notes that she is under psychological care and that her emotional stress is getting worse and, accordingly, she is at risk of a more serious cardiovascular event if the underlying cause is not controlled. *Id.* When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his mother if she were to reside in the United States.

However, as the record has failed to establish the existence of extreme hardship to the applicant's mother if she relocates to the Philippines, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(6)(C) of the Act. 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(a)(6)(C) 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.