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U.S. Citizenship  
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**AUG 11 2009**

FILE: Office: CALIFORNIA SERVICE CENTER Date:

IN RE: [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. 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 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 daughter 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 her mother.

The Director 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 Director*, dated January 17, 2007.

On appeal, 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 her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, counsel submits two briefs. The record also includes, but is not limited to, medical records, medical statements and prescriptions for the applicant's mother; statements from the applicant's two sisters; a statement from the applicant's mother; a resident alien card for the applicant's mother; a statement from the applicant; nursing credentials, license, academic degree and grade transcripts for the applicant; an offer of employment letter for the applicant; and employment letters for the applicant. 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 January 16, 2000 the applicant procured admission into the United States by presenting a false passport and B-2 visa at the airport in Los Angeles, California. *Attorney's brief; false passport and B-2 visa.* Based on her presentation of fraudulent documents at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) 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. 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 of 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 her mother will suffer extreme hardship. The applicant's mother is a national of the Philippines. *Birth certificate for the applicant.* She has been a lawful permanent resident since 1996. *Statement from the applicant's mother, undated; resident alien card.* Six of her children reside in the Philippines. *Statement from the applicant's mother, undated.* The applicant's mother has a medical history of suffering from anxiety, statin-induced myalgias, a ruptured brain aneurysm, transient ischemic attack and stroke, hyperuricemia, elevated liver transaminases, hypertension, hypercholesterolemia, hyperglycemia, a right eye cataract and chronic dizziness. *Statement from [REDACTED] First Integrated Care Medical Group, dated March 12, 2007; See also medical records for the applicant's mother.* The applicant's mother states that she cannot return to the Philippines because she will suffer from a lack of healthcare. *Statement from the applicant's mother, undated.* She notes that she would be unable to receive the medical benefits she receives in the United States. *Id.* She currently receives medical financial assistance provided by the United States government. *Id.* She does not believe she would be able to continue to receive this type of

health benefit in the Philippines. *Id.* While the AAO acknowledges the medical conditions of the applicant's mother as documented by licensed healthcare professionals, it notes that the record fails to include published country conditions reports documenting that the applicant's mother would be unable to receive adequate healthcare in the Philippines. Furthermore, the record does not include a statement from the applicant's mother's physician that establishes that the applicant's mother would be unable to travel to the Philippines. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Counsel notes that the living conditions in the Philippines are far worse than those found in the United States and it would be unlikely that the applicant or her mother would be able to find employment sufficient to support their family. *Attorney's brief*, dated December 2, 2005. While the AAO acknowledges counsel's assertions, it again notes that the record does not document, through published country conditions reports, the economic situation and employment conditions in the Philippines. Additionally, the applicant is not a qualifying relative for the purpose of this case and the record fails to document how any hardship the applicant might encounter would affect her mother, the only qualifying relative in this case. 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). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her 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 her mother will suffer extreme hardship. As previously noted, the applicant's mother is a national of the Philippines. *Birth certificate for the applicant*. She has been a lawful permanent resident since 1996. *Statement from the applicant's mother*, undated; *resident alien card*. The applicant's mother has a medical history of suffering from anxiety, statin-induced myalgias, a ruptured brain aneurysm, transient ischemic attack and stroke, hyperuricemia, elevated liver transaminases, hypertension, hypercholesterolemia, hyperglycemia, a right eye cataract and chronic dizziness. *Statement from [REDACTED]*, *First Integrated Care Medical Group*, dated March 12, 2007; *See also medical records for the applicant's mother*. The applicant lives with her mother and she is the only child upon whom she depends. *Statement from the applicant's mother*, undated. The applicant's mother notes that she has had attacks where her brain did not function well causing her to lose her speaking skills and suffer from memory loss. *Id.* She states that she is unable to take care of herself and that she depends solely upon the applicant. *Id.* The physician of the applicant's mother states that she is very dependent upon the applicant for her care, and it would be detrimental to her health should the applicant not be allowed to stay in the United States. *Statement from [REDACTED] MD, First Integrated Care Medical Group*, dated March 12, 2007. The applicant's mother has two other children, [REDACTED] and [REDACTED], who live in the United States. Her daughter [REDACTED] states that she cannot find the time to attend to her mother's constant needs, as she often works six-day weeks and is a wife and mother. *Statement from the applicant's sister [REDACTED]*, dated March 13, 2007. Her daughter [REDACTED] notes that she is married with four children and one stepchild, and that her own family situation would not permit her to take care of her mother. *Statement from the applicant's sister, [REDACTED]*, dated March 13, 2007. The applicant notes

that she attends all of her mother's doctors' appointments and that she is her only companion. *Statement from the applicant*, undated. When looking at the aforementioned factors, particularly the medical conditions of the applicant's mother as documented by licensed healthcare professionals and the "medically necessary" role that the applicant plays in her mother's care, as stated by the physician treating the applicant's mother, the AAO finds that the applicant has demonstrated extreme hardship to her 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 qualifying relative caused by the applicant's inadmissibility to the United States if she relocates to the Philippines, the applicant is not eligible for a waiver of her 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 she 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.