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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services



H6

DATE: **DEC 07 2011** OFFICE: MANILA, PHILIPPINES FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is the son of a Lawful Permanent Resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director found 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 Field Office Director*, dated June 30, 2009.

On appeal, the applicant's mother asserts that she is experiencing extreme hardship and requests approval of the waiver application. *See Notice of Appeal or Motion (Form I-290) and attachments.*

The record includes, but is not limited to, statements from the applicant's mother submitted with the Form I-601 and on appeal, describing the hardship claim; a statement from the applicant describing the hardship claimed; medical statements pertaining to the applicant's mother; employment verification letters and financial records, including income tax returns and W-2, Wage and Tax Statements, pertaining to the applicant's sisters; letters of support from family members and friends of the applicant; and country conditions information on the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

.....  
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

In the present application, it appears that the applicant entered into the United States in or around 1987, but it is not clear as to whether he entered without inspection or through a port of entry. The record reflects that the applicant applied for legalization on March 2, 1992, which was denied by the legacy Immigration and Naturalization Services (INS) on March 30, 1994. Prior to the denial of his legalization case, the applicant applied for asylum on January 13, 1994. On July 3, 1996, an immigration judge found the applicant to have abandoned his asylum application. Then as a result of an

error in service the immigration judge vacated her decision and reopened the applicant's case, issuing a new order on September 16, 1996, and ordered the applicant deported. The applicant appealed this decision to the Board of Immigration Appeals (BIA), who dismissed his appeal on June 4, 2001. On August 17, 2002, the applicant was refused admission into Canada and he was referred to the legacy INS officials at the Rainbow Bridge, was detained, and deported to the Philippines on October 9, 2002.

Based on this history, the applicant accrued unlawful presence from June 4, 2001, the date the BIA dismissed his appeal of the denial of his asylum application, until October 9, 2002, the date he was deported to the Philippines. The applicant is seeking admission into the United States within ten years of his October 9, 2002 departure. The applicant is, therefore, inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.<sup>1</sup>

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21

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<sup>1</sup> The applicant will no longer be inadmissible under section 212(a)(9)(B)(i)(II) of the Act as of October 9, 2012, the date on which the ten-year period during which his admission to the United States has been barred will end.

I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, the applicant’s mother asserts that the applicant’s removal has caused her extreme hardship. She asserts that during the time the applicant lived in the United States he drove her to medical appointments, to church, to the hospital and pharmacy, and to shop for groceries. Since the applicant’s departure, she states, her mobility has been “severely curtailed” because she must depend on the availability of her daughters, both of whom work as registered nurses. The applicant’s mother reports that in May 2009 she had severe muscle cramps in her stomach and kidney area, but neither of her two daughters could take leave from their work to care for her.

The record includes February 21, 2007, October 30, 2008 and April 3, 2009 letters from [REDACTED] stating that the applicant’s mother is under his care for diabetes mellitus, hypertension and chronic insufficiency. [REDACTED] further reports that the applicant’s mother takes many medications and needs to be monitored every two to three months. The record also provides an undated medical letter from [REDACTED] who states that he has been treating the applicant’s mother for dry eye syndrome since 2003. [REDACTED] also states that the applicant’s mother has also been treated by his medical group’s retina specialist for other problems. The record further includes a February 19, 2007 letter from [REDACTED] that indicates the applicant’s mother had two cataract surgeries in October 2001, and that she follows up with [REDACTED] a retinal specialist, as a result of her diabetic condition.

The AAO notes the applicant's mother's claims regarding her previous dependence on the applicant and that her daughters on whom she now depends are at times too busy to provide her with the assistance she requires. We also note, however, that the medical statements, which establish that the applicant's mother suffers from chronic, serious medical conditions, fail to indicate that her medical conditions are exacerbated by her son's absence or that her health is suffering as a result of inadequate assistance or care at home. It is noted that the applicant and his mother have been separated for nearly 10 years and that the applicant's mother indicates that she is currently provided with loving care and financial support by her two United States citizen daughters. It is also noted that the applicant's mother indicates, in her response to the Field Office Director's March 9, 2009 request for evidence, that she has other adult children in the United States beyond her two daughters. We note that there is nothing in the record that establishes these children would be unable or unwilling to assist their sisters in caring for their mother.

There is insufficient documentation of the applicant's mother's medical condition in the record to allow an assessment of her needs. Without this evidence, the AAO cannot assess the nature and extent of hardship the applicant's mother would suffer without the applicant's support and whether such hardship would be beyond that which would normally be experienced as a result of family separation.

The AAO finds, therefore, when the hardship factors are considered in the aggregate, the applicant has failed to establish that his U.S. citizen parent would experience extreme hardship as a result of their continued separation.

Regarding relocation, the applicant's mother asserts that she has established "roots" in the United States and would face "unfavorable" conditions in the Philippines. She also states that she cannot leave her daughters on whom she depends for financial and emotional support and that her daughters, both of whom are employed in the United States as registered nurses, cannot relocate to the Philippines because they would not earn equivalent incomes. The applicant's mother further contends that she would be in danger in the Philippines due to crime and violence and states that she would not get the same quality health care and benefits in the Philippines. She also states that by relocation to the Philippines she would risk losing her Lawful Permanent Resident status.

The applicant's mother points to newspaper reports of poor health conditions in the country, including an article on newborn deaths due to neonatal sepsis, an article on the high rate of cigarette smoking, and an article on the wasting of medical supplies. The record also includes a [REDACTED] article by Philippine Daily Inquirer, *US Travel Advisory*, warning United States citizens against traveling to [REDACTED] following bomb attacks.

We note that the applicant's mother would likely relocate to Manila where the applicant resides. It is noted that recently the United States Department of State, *Bureau of Consular Affairs*, Travel Warning for the Philippines indicates that terrorist attacks are greatest in the [REDACTED] and it also warns that "terrorist attacks could be indiscriminate and occur in other areas, including Manila." The Travel Warning also indicates that kidnap-for-ransom gangs are active throughout the Philippines and advises United States citizens living and working throughout the Philippines to exercise heightened caution in public gathering places. See United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning*, June 14, 2011.

We also acknowledge as realistic and a significant hardship factor that by relocating to the Philippines the applicant's mother would risk losing her Lawful Permanent Resident status. In addition, while the record does not establish that the applicant's mother could not obtain adequate health care upon relocation, we take note that the applicant's elderly mother is being treated by healthcare providers who are familiar with her various conditions (and in whom she has confidence), and that losing these providers and having to find new doctors would constitute a hardship at her age.

The AAO's review of the documentation in the record, finds that when these specific hardships are added to the applicant's mother's separation from her family in the United States and the normal difficulties that a nearly 79-year old woman with health problems would encounter in moving to a new location, the evidence establishes extreme hardship upon relocation. It has thus been established that the applicant's mother would suffer extreme hardship if she relocates to the Philippines to reside with the applicant due to his inadmissibility.

Although the applicant has demonstrated that his mother, the qualifying relative, would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As discussed above, the applicant has not demonstrated that his qualifying relative would experience extreme hardship as a result of separation. Therefore, he has not established eligibility for a waiver under section 212(a)(9)(B)(v) 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)(9)(B)(v) 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.