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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO (SACRAMENTO) Date: APR 24 2008

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:

[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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, CA, 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated March 3, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that on May 11, 1989 the applicant gained admission into the United States at the San Francisco Airport using a false passport and an assumed name. He therefore misrepresented a material fact, his true identity, to gain admission into the United States. For this reason, the AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

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. Hardship to an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen mother. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's mother must be established in the event that she joins the applicant in the Philippines, and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel states that the applicant's mother, who is 83 years old, has high blood pressure and vision and hearing loss, takes medication, and requires frequent visits to the doctor's office. Counsel states that the applicant's mother does not drive, does not have a driver's license, and has limited English proficiency. She states that the applicant frequently cooks meals for his mother, does her grocery shopping, and assists her when she needs to leave the house and attend church services. Counsel states that the applicant's mother has other children, but relies on the applicant because of his flexible work schedule. She states that the applicant came to San Francisco to provide care for his father, who died in 1997. Counsel states that as the eldest son the applicant is expected to care for his parents in their advanced years. She states that the applicant helped his mother overcome depression when his father died. She states that the applicant lives near his mother and expects to live with her so that he may care for her more closely. She states that due to family obligations the applicant's siblings cannot devote the necessary time to care for their mother. Counsel states that the applicant's mother would experience extreme hardship far beyond the ordinary disruptions associated with removal of a close family member if the waiver application were denied. She states that the applicant's mother would be heartbroken if she never saw her son again. Counsel states that the Supreme Court in *INS vs. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987) has held that close calls in interpreting immigration statutes should be construed in favor of the alien given the draconian consequences. Counsel states that in the aggregate the applicant has demonstrated that his mother's suffering is above and beyond the ordinary disruptions involving the deportation of a family member.

The letter by the applicant's mother states that she has 11 children and that the applicant takes care of most of her needs. She states that she has high blood pressure, which requires medication and checkups, and is hard

of hearing. She states that she never had a driver's license and that her English is poor. She indicates that her son cooks her meals, does her grocery shopping, and takes her to church services; and with her limited income, she states that this help would be unaffordable. The applicant's mother states that many of her adult children live in the San Francisco area, and that almost all of them have a family and a full-time job. She states that the applicant's wife and children live in the Philippines. She states that her older children are retired and have health problems. The applicant's mother conveys that she lives in the in-law apartment of her daughter's house in San Francisco, and that the applicant lives in Sacramento, commuting to his part-time job in South San Francisco several days every week. She states that her daughter is having an additional room added to the in-law unit so that the applicant can stay with her on a more regular basis.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record fails to establish extreme hardship to the applicant's mother if she were to remain in the United States without him.

Although the applicant's mother indicates that she has health problems, there are no medical records of her health problems. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *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).

With regard to family separation, counsel is correct in that courts in the United States have stated that "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); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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).

However, courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Guadarrama-Rogel v. INS,* 638 F.2d 1228, 1230 (9th Cir.1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); and in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA stated the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

The record conveys that the applicant's mother is very concerned about separation from her son. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's mother, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the

applicant's mother, is unusual or beyond that which is normally to be expected upon removal. *See Sullivan, Guadarrama-Rogel,* and *Dill, supra.*

Furthermore, the AAO observes that the applicant's mother would not be alone in the United States if the applicant's waiver application were denied. The applicant's mother presently lives in an in-law unit at her daughter's house in San Francisco and at the time the waiver was filed the applicant was living in Sacramento and not staying with his mother on a regular basis.

The record is insufficient to establish that the applicant's mother would experience extreme hardship if she were to join her son to live in the Philippines.

The applicant has made no hardship claim about his mother living with him in the Philippines.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.