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

Hj

PUBLIC COPY

[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date: JUN 05 2007

IN RE:

[REDACTED]

PETITION: 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 PETITIONER:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant [REDACTED] is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to gain entry into the United States. The applicant is the husband of [REDACTED] a naturalized citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director concluded that the applicant failed to establish extreme hardship to his qualifying relative, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director, dated January 27, 2000.*

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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 chapter is inadmissible.

The record reflects that the applicant was admitted into the United States through the Seattle airport on or about June 7, 1990 using a Philippine passport with an assumed name. *Decision of the District Director, dated January 27, 2000.* The district director was therefore correct in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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

Section 212(a)(6)(C)(iii) of the Act states that for provision authorizing waiver of clause (i), see subsection (i) of this section. Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 denying the applicant's waiver application, the director stated the following. The decisions in *Matter of Nagi*, 19 I&N Dec. 245 (Comm. 1984); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); and *Matter of W*, 9 I&N Dec. 1 (BIA 1960) indicate that the common results of the bar to admissibility such as mere separation and financial difficulties, in themselves, are insufficient to establish "extreme hardship" unless combined with much more extreme impacts. Other cases, such as *Matter of Pilch*, 21 I&N Dec. 627 (BIA

1996); *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985); and *Banks v. INS*, 594 F.2d 143 (7th Cir.) held that the mere loss of employment, the inability to maintain one's present standard of living or pursue a chosen profession, separation of a family member, or cultural readjustment do not constitute extreme hardship.

On appeal, counsel makes the following statements. Citizenship and Immigration Services (CIS) abused its discretion in finding that the applicant failed to demonstrate extreme hardship to his wife. [REDACTED] submitted evidence of her health problems (high blood pressure and high cholesterol), and as conveyed in the Kaiser Permanente letters, they have worsened because of her husband's immigration problems. [REDACTED] and her husband and son have access to medical care, particularly Kaiser Permanente, as a benefit of her employment as a licensed vocational nurse (LVN) with Beverly HealthCare, where she earns \$18.30 per hour. CIS failed to provide a basis for its opinion that medical care in the Philippines is very good. [REDACTED] who has resided in the United States for 22 years, would find it difficult at her advanced age to find similar work with parallel health care benefits. [REDACTED] has spent the past 18 years providing financial stability for her family. Her son will attend California State University, Pomona, for the fall 2000 semester; but she will not be able to afford college for him if she joins the applicant in the Philippines. She must choose between life in the United States with her son and life with her husband in the Philippines. The extreme hardship standard of *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) has been established here. Courts have indicated that CIS must consider each relevant factor in determining whether there is extreme hardship; if CIS had done this, it would have found extreme hardship. CIS completely ignored [REDACTED]'s ties to her only child who lives in the United States; it also ignored conditions in the Philippines. It did not consider evidence in the aggregate, as required in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), and it failed to follow precedential court decisions and misapplied those decisions. Extreme hardship is not a definable term. In *Matter of O-J-O*, *supra*, the Board of Immigration Appeals (BIA) found extreme hardship would befall a 24-year-old illegal alien who had lived in the United States since age 13, spoke fluent English, assimilated into the American lifestyle, was involved in activities in the United States, and had no other means of obtaining legal residency. Extreme hardship is present here: [REDACTED] is a U.S. citizen, she has worked here as an LVN for 22 years, she speaks fluent English, she provides for her U.S. citizen son, and she is assimilated into the American lifestyle. In the extreme hardship analysis, CIS cited decisions dealing with extreme hardship in suspension of deportation and section 212(h) waiver cases. The term "extreme hardship" is found in suspension of deportation and section 212(h) and 212(i) of the Act. But the comparison ends there. Suspension is relief from deportation for an alien who will suffer extreme hardship of a higher degree in comparison with the ordinary alien facing deportation. A section 212(h) waiver allows relief for having committed relatively serious crimes. A section 212(i) waiver involves a relatively minor offense, a previous fraud. The U.S. Supreme Court narrowly interprets "extreme hardship" in suspension relief, as indicated in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Hernandez-Cordero v. INS*, 819 F. 2d 558 (5th Cir. 1987); and *Ramirez-Durazo v. INS*, 794 F. 2d 491 (9th Cir. 1986). The guideline of extreme hardship for suspension cases such as *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); *Matter of Cervantes*, *supra*; *Matter of Piltch*, *supra*; and *Matter of O-J-O*, *supra*, cannot be transferred into a section 212(i) waiver context. Transferring the analysis of extreme hardship from suspension cases, without acknowledging and accounting for the rationale behind the narrow interpretation of extreme hardship, is an abuse of discretion. Similarly, the narrow interpretation of extreme hardship in the context of section 212(h) waivers, such as in *Matter of Nagi*, 19 I&N Dec. 245 (BIA 1984) and *Shooshtary v. INS*, 39 F. 3d 1049 (9th Cir. 1994), due to the seriousness of the criminal actions being waived, cannot be transferred to cases involving a section 212(i) waiver. A section 212(i) waiver has only recently required an extreme hardship component. Other sections

of the Act involving waivers for fraud, such as section 237(a)(1)(H), still do not require an extreme hardship component. The history of waivers of admissibility and deportability for fraud dictates that this relief is not of the same exceptional nature as suspension of deportation and section 212(h) relief. Although the analysis of extreme hardship for suspension cases is useful as an outline for determining extreme hardship in the section 212(i) context, extreme hardship cannot be construed as narrowly. Here, the applicant has exceeded the requirement of showing extreme hardship. The applicant is deserving of a favorable exercise of discretion.

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 the applicant and to his or her child is not a permissible consideration under the statute. However, hardship to the [REDACTED] and to his stepson will be considered here, but only to the extent that it results in hardship to a qualifying relative. The qualifying relative here is [REDACTED] the applicant's wife. 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).

Counsel is correct in that "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*, *supra* at 564. The BIA in *Matter of Cervantes-Gonzalez* lists the factors that are 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 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, *supra* at 383, 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).

Counsel asserts that the analysis of extreme hardship in suspension and section 212(h) cases is helpful in determining extreme hardship under section 212(i) of the Act, and that the term "extreme hardship" in section 212(i) cases should not be construed as narrowly as in suspension of deportation and section 212(h) cases. He asserts that the analysis of extreme hardship in the context of suspension and section 212(h) cases, such as *Matter of Anderson*, *supra*; *Matter of Cervantes*, *supra*; *Matter of Piltch*, *supra*; and *Matter of O-J-O*, *supra*, should not be transferred into a section 212(i) waiver context. Counsel asserts that the hardship analysis involved in suspension and 212(h) criminal cases differs from section 212(i) fraud cases.

The AAO notes that *Matter of Cervantes, supra*, is used in cases involving waivers of inadmissibility as guidance for what constitutes extreme hardship and that this cross application of standards is supported by the BIA. In *Matter of Cervantes-Gonzalez, supra* at 565, the BIA, assessing a section 212(i) waiver of inadmissibility case, wrote:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion [S]ee . . . *Hassan v. INS*, 927 F.2d 465, 467 (9th Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

In, *In Re Monreal-Aguinaga*, 23 I&N Dec. 56, 63(BIA 2001), a section 240A(b) of the Act, 8 C.F.R. § 240.20, cancellation of removal case, the BIA states:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing "extreme hardship" for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing "exceptional and extremely unusual hardship" are essentially the same as those that have been considered for many years in assessing "extreme hardship," but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

In, *In Re Kao-Lin*, 23 I & N Dec. 45, 49 n.3 (BIA 2001), a suspension of deportation case that dealt with a waiver of inadmissibility under section 212(i) of the Act, the BIA referred to the factors listed in *Matter of Anderson, supra*, in making a determination of extreme hardship, stating in footnote 3 that:

The standard for "extreme hardship" that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Thus, the AAO finds unpersuasive counsel's assertion that the standard of extreme hardship in suspension and section 212(h) waiver cases is different from section 212(i) cases.

The record here contains three affidavits by [REDACTED]. They state the following. She has lived in the United States for 26 years. She has known the applicant since 1991; she has had a close and loving relationship with him; and she depends on him. She married the applicant when she was 45 years old. After

her son completes army leadership training, he will reside with her and her husband. She and her son will endure extreme emotional hardship if the applicant returns to the Philippines. Her son will suffer the emotional hardship of being raised by one parent. She would have to choose between life in the United States with her son and life in the Philippines with her husband. In the United States, she works up to 60 hours a week as a nurse; she financially supports her family, including her son who attends college. Her husband works as a sales clerk and a job coach; he helps pay her son's college expenses. They would not find comparable jobs in the Philippines, where the economy is depressed and finding a job or providing for one's family in Mexico Pampanga is difficult. She and her husband have family in the Philippines, but they are not able to help them there. She worries about leaving the family members of her husband who live in the United States and who they are helping. She has medical problems and would not do well in the Philippines, where she developed allergies, rashes, and breakouts, and an upper respiratory tract infection. The Philippines is a foreign country and she feels depressed when thinking of living there.

The evidence in the record related to the health problems of the applicant's wife includes a letter, dated February 3, 2000, from [REDACTED] Department of Family Medicine, Kaiser Permanente. This letter states that the applicant's wife has hypertension (high blood pressure) that has worsened from increased stress regarding her husband's immigration status, palpitations, headaches, increased cholesterol, and neck problems. The record contains [REDACTED] medication labels and medical records, and letters from physicians.

The record contains letters from [REDACTED] son. In the letters, he indicates his attachment to the applicant, and his concern about the separation of his mother from his stepfather.

The record contains employment verification letters, birth certificates, a divorce certificate, a marriage certificate, income tax records, payroll records, W-2 Forms, photographs, and other documentation.

U. S. courts have 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, supra* at 1293; *Cerrillo-Perez, supra* at 1424 (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, the fact that the applicant has a U.S. citizen stepson is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

The AAO will now apply the *Cervantes-Gonzalez* factors here in determining extreme hardship to the applicant's wife. Extreme hardship to the applicant's wife must be established in the event that she remains in the United States; and in the alternative, that she joins the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record does not establish that the applicant's wife would endure economic hardship if she remains in the United States without her husband. [REDACTED] is employed full-time earning \$18.30 per hour as a nurse. No evidence has been furnished to show that she requires the income of the applicant to meet monthly household expenses or pay for her son's college expenses. 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)).

The AAO finds that the record is insufficient to establish that [REDACTED] s high blood pressure and high cholesterol pose a serious health condition that requires her husband's care. There is no evidence in the record establishing that [REDACTED] is unable to work on a full-time basis for health reasons. 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, supra*.

The applicant's wife will undoubtedly experience emotional hardship if separated from her husband of ten years. The AAO is mindful of and sympathetic to the emotional hardship that results from separation from a loved one, and it notes that [REDACTED] is concerned about the emotional impact of the separation of her son, who is now 25 years old, from the applicant. However, the AAO finds that [REDACTED] situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra*.

The record does not indicate that [REDACTED] will endure extreme hardship if she joins the applicant in the Philippines.

Counsel states that the BIA found extreme hardship in *Matter of O-J-O-*, *supra*, and that the facts in the present case are similar to those in *Matter of O-J-O*. The AAO disagrees. In *Matter of O-J-O*, the BIA considered hardship to the alien in order to find extreme hardship. Section 212(i) of the Act is very clear that hardship to the applicant, in this case Mr. Montalbo, is not a factor in determining extreme hardship. Thus,

the finding of extreme hardship to the alien in *Matter of O-J-O* is not the same as finding extreme hardship to an applicant's spouse. It is noted that the alien in *Matter of O-J-O* lived in the United States since the age of 13, and he completed elementary school, junior high, and high school in the United States. Neither the applicant nor his wife lived in the United States since the age of 13, and they did not complete elementary school, junior high, and high school in the United States. Thus, the facts here are distinguishable from those in *Matter of O-J-O*.

As stated in *Matter of Anderson, supra*, and *Matter of Cervantes-Gonzalez, supra*, the conditions of the country where the alien and his or her family will be returning are relevant in determining hardship. However, economic hardship claims of not finding employment in the Philippines and not having proper medical care benefits do not reach the level of extreme hardship. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit stated that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra*. In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that the petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute "extreme hardship and that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship." The U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang, supra*.

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [redacted]'s claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

[redacted]'s claim of economic hardship stemming from inability to find work in the Philippines is not supported by evidentiary material. 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, supra*.

[redacted]'s hardship claim regarding lack of health care in the Philippines is not persuasive in establishing extreme hardship. Loss of group medical insurance and "second class" medical facilities in foreign countries are not considered "extreme hardship." See *Carnalla-Munoz, supra*; and *Matter of Correa, supra*.

The need of [redacted] to acculturate to life in the Philippines and her separation from her son and other relatives in the United States do not establish extreme hardship. *Matter of Piltch, supra* at 631, states that separation from a family member or cultural readjustment do not constitute extreme hardship. It is noted that the applicant has a 36-year-old daughter who lives in the Philippines. *Form I-485*.

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 deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation 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).

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

ORDER: The appeal is dismissed.