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U.S. Department of Homeland Security  
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Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

FILE:

[Redacted]

Office: MANILA, PHILIPPINES

Date: APR 22 2004

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.

*Handwritten signature: Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Manila, Philippines. The matter 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. The applicant 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 a period of more than one year. The record reflects that the applicant entered the United States (U.S.) without inspection in 1997, and that he remained unlawfully in the United States until September 1999. The applicant married a U.S. citizen in the Philippines on May 25, 2001, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The Officer in Charge (OIC) found that the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly.

On appeal, counsel asserts that his wife (Ms. [REDACTED]) will suffer physical, emotional, moral and financial hardship if the applicant is not granted a waiver of inadmissibility. Counsel asserts further that Ms. LaBode is a caretaker for her ill parents and that in the future she may donate one of her kidneys to her ill brother.

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

- (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.

....

- (v) Waiver. - The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed to be relevant in determining whether an alien has established extreme hardship. These factors included 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. The Board noted in *Cervantes-Gonzalez* that the alien's wife knew her husband was in deportation proceedings at the time they were married. The Board found the fact that the alien's wife knew at the time of their marriage, that she might have to face a decision of parting from her husband or following him to his country if he were ordered deported, was a factor that undermined the alien's extreme hardship argument.

In the present matter, the applicant asserts that his wife will suffer extreme hardship if he is unable to join her in the United States. It is noted, however, that Ms. [REDACTED] married the applicant in the Philippines on May 25, 2001, approximately two years after his return to that country. It thus appears that at the time of her marriage to the applicant, Ms. [REDACTED] knew that she might have to face the decision of living apart from her husband or joining him in the Philippines if his petition for an immigrant visa were not granted.

Medical letters submitted by Dr. Yaron Bareket and Dr. Mark Druck indicate that Ms. [REDACTED] mother suffers from multiple medical conditions, and that her father is under treatment for metastatic prostate cancer. Neither of the doctor's letters discusses the applicant, however, and the letters do not indicate that the applicant provides medical assistance to her parents or that her assistance is required. The record also contains a medical letter from Dr. Joseph Frascino stating that Ms. [REDACTED] mother is under treatment for kidney disease and that the doctor was advised that Ms. [REDACTED] acts as his caretaker. However, the letter does not state that Ms. [REDACTED] brother needs Ms. [REDACTED] to act as his caretaker, and the letter provides no details regarding the type of care that Ms. [REDACTED] provides to her brother. The AAO notes that the letter also does not indicate that Ms. [REDACTED] will donate one of her kidneys to her brother, and there is no other evidence in the record to support the contention that Ms. [REDACTED] will be donating one of her kidneys to her brother.

The record contains two additional medical letters from Dr. Levine and Dr. Garay, indicating that Ms. [REDACTED] suffers from allergies and sinus infections, and that she has a history of a heart murmur and asthma. The letters indicate that Ms. [REDACTED] currently takes oral medications including oral inhalers, nasal inhalers and nebulizer treatments, and that the high humidity and temperatures in the Philippines would exacerbate Ms. [REDACTED] health conditions. The AAO notes that the record contains no detailed or independent information to establish the type or level of health complications suffered by Ms. [REDACTED] or to indicate that she suffers from a significant health condition for which she would be unable to obtain oral medication or medical treatment in the Philippines.

The AAO notes further that the record contains no independent evidence to support the assertion that Ms. [REDACTED] would suffer extreme emotional or moral hardship if the applicant's waiver application were denied, or that she would suffer any type of financial hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO finds that the evidence in the present record, when considered in its totality, fails to demonstrate that Ms. [REDACTED] would suffer hardship beyond that normally experienced upon the removal of a family member, if the applicant were not allowed to return to the United States. Having found the applicant ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.