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U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED]

Office: NEWARK DISTRICT OFFICE

Date: OCT 22 2004

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent unauthorized
invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, Newark. 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 inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen and mother of a U.S. citizen daughter. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and daughter.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Second Decision of the District Director* (September 12, 2003). The AAO notes, as did the district director below, that the applicant previously filed an application for waiver, which was denied. *First Decision of the District Director* (March 30, 2001). The appeal of the denial was dismissed by the AAO. *Decision of the AAO* (December 13, 2001). The applicant then withdrew her pending adjustment application. *Applicant's Withdrawal* (March 28, 2002). She later re-filed her application for adjustment and waiver of inadmissibility. The entire record was reviewed in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted fraudulent use of a passport to procure admission into the United States in 1990. *Decision of the District Director* (September 12, 2003) at 1. The applicant does not contest the district director's determination of inadmissibility.

On appeal, counsel contends that the district director failed to give adequate weight to the psychological assessment. Counsel also contends that USCIS failed to consider the hardship that the refusal of applicant's admission would cause to her lawful permanent resident mother and father.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The AAO notes that the record contains several references and documentation addressed to the hardship that the applicant’s child would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant’s child. In the present case, the applicant’s spouse and parents are the only qualifying relatives under the statute, and the only relatives for whom the hardship determination is permissible.

The record in the instant case indicates that the applicant’s husband is a registered nurse. Although there is an assertion in the record that he is currently unemployed, there is no evidence to support that fact and, from the financial records on file, it appears that he contributed substantially to the couple’s household income in 2002, about 37%, or approximately \$53,000. The record does not support a finding of financial loss that would result in an extreme hardship to him if he had to support himself without the additional income provided by the applicant, approximately \$92,000.

Counsel submits medical records regarding the mental and physical health of the applicant’s husband. Included with the “Special instructions” on the “Patient Discharge Information” for the applicant’s husband, dated August 1, 2003, is a handwritten note stating, “Pt is leaving New Jersey and going to Washington (state of) today at 4:45 p.m. Continental Airlines to reside [with] his mother.” *Holy Name Hospital Patient*

Discharge Information (August 1, 2003). The significance of this statement is not clear from the record. Nor are the reasons for the applicant's visit to the hospital on that date; there is no indication in the record why he was in the hospital on that date, and whether he was admitted. A brief letter is also in the record, which states, "[redacted] began Brief Treatment Therapy with this therapist on September 2, 2003. His treatment plan calls for up to one session per week . . . the agency psychiatrist is prescribing his psychotropic medications." *Letter of Harry Tomson, MS, NCC* (September 3, 2003). The *Patient Discharge Information, supra*, lists (as best as can be deciphered from the handwritten information) Paxil, Resperdal, and Geodor, as medications. Although Paxil is a relatively well-known anti-depressant, there is no information in the record to explain or even name the condition or conditions these specific medications were prescribed to treat. The notes also state, "suggest to call insurance co – from Washington to set up a partial hospital program/day program." *Patient Discharge Information, supra*. Counsel notes only that "the USC spouse's mental condition is deteriorating," but does not further elaborate or provide evidence to explain his diagnosis, prognosis, or treatment plan. *Brief in Support of Appeal* (November 4, 2003). Based on this incomplete information, the AAO cannot conclude that the applicant's husband has a serious medical condition that would contribute to a finding of extreme hardship. The AAO also notes that further inquiry would be needed by the district director as to whether the statement that the applicant's husband is moving across the country calls into question the status of the marriage.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's parents or spouse face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The psychosocial assessment of the applicant's husband and the psychological assessment of the applicant's mother show that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. *Letter of Paula J. Angelone, MA, CSW* (May 13, 2002); *Letter of Stephen Reich, PhD* (October 22, 2003). Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The applicant's spouse himself stated, "permanent separation from spouse and child is, *by its very nature*, extreme in the hardship which it imposes." *Statement of Ariel Durano* (July 18, 2002) (emphasis added). The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family

members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.