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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CALIFORNIA Date: **OCT 27 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent [redacted] granted
[redacted]

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DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California, 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 (U.S.) 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 having procured admission into the United States by fraud or willful misrepresentation in February 1992. In June 1996, the applicant married a lawful permanent resident who became a naturalized U.S. citizen in 1999. The applicant is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The interim district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that Citizenship and Immigration Services (CIS) failed to give due consideration to the factors relevant to determining whether the applicant's removal would result in extreme hardship to his wife, Mrs. Caraig. Counsel also contends that CIS did not properly balance the equities present in this case, and that CIS incorrectly based its analysis of extreme hardship on standards applicable to withholding of deportation cases rather than standards pertaining to waivers 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.

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 lawful resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In the present case, in order for the applicant to qualify for a section 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse. It is noted that Congress specifically did not include

hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen daughters will therefore not be considered in this decision.

Counsel asserts that due to their different purposes and scope, the extreme hardship standards set forth in past suspension of deportation and section 212(h), 8 U.S.C. § 1182(h) legal cases, should not be applied to immigration cases involving section 212(i) of the Act. Counsel implies that the inadmissibility bar under section 212(a)(6)(C) of the Act is less serious than the criminal or deportation based grounds addressed in suspension of deportation or section 212(h) proceedings, and that the standard for extreme hardship under section 212(i) should thus be construed more broadly. Nevertheless, the fact that laws in recent years have limited rather than extended the relief available to aliens who have committed fraud or misrepresentation goes contrary to counsel's assertion that section 212(i) waivers should be broadly applied.

In addition to significant amendments made to the Act in 1996, by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). Moreover, the Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act. In 1990, section 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act." Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including "impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name". *See 18 U.S.C. § 1546.*

Moreover, the Board of Immigration Appeals ("Board") stated in, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) that:

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.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board then outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen

family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

In the present case, the record reflects that the applicant is from the Philippines and that his family continues to reside in that country. The record also reflects that [REDACTED] is a native of the Philippines, and that she lived in that country until she was approximately 40 years old. According to the documentation on the record, [REDACTED] has three U.S. citizen daughters who are all in their thirties.

Counsel states that [REDACTED] is emotionally distressed by the possibility of the applicant's departure from the United States. The record contains a note from a doctor to the effect that [REDACTED] suffers from acute depression, but there is no documentation linking this condition with the applicant's immigration situation. According to counsel, [REDACTED] would suffer emotional hardship if she remained in the U.S. while the applicant returned to the Philippines. Counsel also asserts that [REDACTED] would be very upset if she chose to accompany the applicant back to the Philippines, because she would have to leave her adult daughters and her grandchildren. In her statement on appeal, [REDACTED] points out that she helps all her daughters a great deal with childcare, and that her eldest daughter suffers from rheumatoid arthritis, so she needs [REDACTED] assistance with household chores. The record includes a doctor's note stating that [REDACTED] daughter is under medical care for rheumatoid arthritis. There is no evidence, however, that [REDACTED] is caring for her daughter or to what extent her daughter requires [REDACTED] assistance.

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 (9th Cir. 1991). For example, *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 (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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Counsel asserts that the Philippines is economically depressed and that [REDACTED] would be unable to find work if she returned there with the applicant. The record contains no independent evidence to support this assertion. 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. Counsel also contends that [REDACTED] would be at risk of physical harm due to political instability in the Philippines. The record contains generalized Department of State country conditions information, but no documentation demonstrating that [REDACTED] herself would be at risk should she return to the Philippines.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily 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(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.