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U.S. Citizenship
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Services

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FEB 22 2005

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date:

IN RE:

[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

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter 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 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 21, 2003.

On appeal, counsel states that the applicant did not enter under a false name and therefore did not misrepresent a material fact. Counsel asserts, therefore, that the applicant is not inadmissible. Counsel further indicates that if the applicant is found to be inadmissible, she can provide evidence of extreme hardship to a United States citizen. *Form I-290B*, dated December 8, 2003.

In support of these assertions, counsel submits a brief and a declaration of the applicant. The entire record was considered in rendering a decision on the appeal.

The record reflects that during December 1993, the applicant obtained entry into the United States by presenting a passport and visitor visa issued in her maiden name. The record reflects that the applicant married her spouse in the Philippines on November 4, 1993, prior to entering the United States on a visitor visa, and has remained in the United States since December 1993.

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 Act is inadmissible.

Section 212(i) of the Act provides:

- (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.

The AAO acknowledges counsel's assertion that the applicant did not misrepresent a material fact upon obtaining entry into the United States in December 1993. *Applicant's Brief in Support of Appeal*, dated February 4, 2004. The AAO finds that by presenting a visitor visa to an officer to obtain entry to the United States, the applicant indicated an intent to depart from the United States in compliance with the terms of the visitor status under which she was admitted. As the applicant was married to a lawful permanent resident of the United States at the time of her entry and did not intend to depart from the United States in compliance with her authorized period of stay, the applicant willfully misrepresented a material fact in obtaining entry to the United States.

The AAO acknowledges counsel's contention that previous representation for the applicant erroneously reported information concerning the applicant to Citizenship and Immigration Services (CIS). *Id.* The AAO notes that the applicant signed the forms submitted by previous counsel to CIS on the applicant's behalf and is therefore accountable for the statements made therein. Counsel indicates that the applicant is attempting to satisfy the requirements of *Matter of Lozanda*, but fails to provide pertinent information relating to that case and does not identify the requirements to which she refers.

The AAO notes counsel's assertion that where there is no misrepresentation, hardship to the applicant's children can be considered. *Id.* The AAO finds that the applicant did misrepresent a material fact in obtaining entry to the United States and notes that if she had not, she would not be inadmissible to the United States, based on the record, and a consideration of hardship would be unnecessary, therefore, counsel's assertion is superfluous and unfounded.

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 the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's spouse would suffer hardship as a result of relocation to the Philippines in order to remain with the applicant. Counsel states that the applicant's spouse has lived in the United States for many years and that his mother, children and friends reside in the United States. *Applicant's Brief in Support of Appeal*. Counsel contends that the applicant's spouse would face difficulty in relocating to the Philippines because he would be forced to sell his home and quit his job. *Id.* Counsel indicates that it would

be unfair to expect the applicant's spouse to begin life anew in another country at his age and in consideration of his responsibility to provide for his three children. *Id.*

The record fails to assert extreme hardship to the applicant's spouse if he remains in the United States in order to maintain proximity to family members, continue residence in his country of citizenship and carry on in providing for his children. 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* 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. Moreover, the AAO notes that 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 recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, his situation, if he 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.