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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H/2

[Redacted]

FILE:

[Redacted]

Office: SANTA ANA, CA

Date:

JAN 21 2015

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]

IDENTIC COPY

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

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 citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

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 June 9, 2004.

On appeal, counsel states that Citizenship and Immigration Services abused its discretion in failing to give proper weight to the evidence presented. *Form I-290B*, dated July 8, 2004.

In support of these assertions, counsel submits a brief; a United States Department of State Public Announcement for the Philippines, dated April 28, 2004; a letter from the family doctor of the applicant's spouse; a letter from a clinical social worker and a report of discharge from the United States Armed Services. The entire record was considered in rendering a decision on the appeal.

The record reflects that on August 26, 1992, the applicant obtained entry into the United States by presenting a passport and visa issued in the name of another individual.

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.

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 his entire life in the United States and that his entire family resides in the United States. *Motion to Reconsider/Brief in Support of Appeal*, dated July 7, 2004. Counsel contends that the applicant's spouse is unable to relocate to the Philippines because, in the United States, he provides care to his sister who suffers from a mental condition. *Id.* at 3. Counsel indicates that the advanced age of the applicant's spouse and his inability to speak Tagalog would prevent the applicant's spouse from obtaining employment in the Philippines. *Id.* The AAO notes that the employment claim asserted by counsel is unpersuasive as the applicant's spouse is retired in the United States and the record fails to demonstrate that he would need to be employed in the Philippines. Counsel also states that conditions in the Philippines pose security concerns for American citizens. *See Department of State Public Announcement*, dated April 28, 2004.

The record fails to establish extreme hardship to the applicant's spouse if he remains in the United States in order to provide care to his sister, maintain proximity to family members and continue residence in his country of citizenship. Counsel contends that the applicant's spouse would suffer emotionally and mentally as a result of separation from the applicant. *Motion to Reconsider/Brief in Support of Appeal* at 4. To support this assertion, counsel submits a letter from a licensed clinical social worker. *Letter from [REDACTED] MSW, LCSW*, dated June 22, 2004. The reporting social worker indicates that the applicant's spouse is suffering from depression, sleep disturbance, anxiety and fear, however, the record fails to identify a course of treatment or medication prescribed to the applicant's spouse to combat these symptoms. The AAO notes that the social worker's letter appears to be based on a single meeting with the applicant's spouse and draws exclusively on the comments of the applicant's spouse during their isolated meeting. *Id.* The family physician treating the applicant's spouse likewise states that the applicant's spouse suffers from episodes of depression and recommends that the applicant remain in the United States with her spouse, however, no additional treatment is indicated. *Letter from [REDACTED]* dated June 27, 2004.

Counsel contends that the decision of the director incorrectly applies precedent to the circumstances of the instant application. *Motion to Reconsider/Brief in Support of Appeal* at 4-6. Counsel seeks to distinguish the factual circumstances presented in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) and *Matter of Ige*, 20 I&N Dec. 880 (BIA 1984) from the circumstances of the applicant. The AAO recognizes that the factual circumstances presented in the identified cases are distinguishable from those presented in the instant

application, however, the decision of the director references the identified case law in an effort to provide representative examples and counsel fails to establish that the statements of the director are inapplicable to the instant application.

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 will endure hardship as a result of separation from the applicant. However, his situation, based on the record, 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.