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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: MAR 23 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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 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 filed an I-485 Adjustment of Status application based on her marriage to a naturalized U.S. citizen. The applicant was found to be inadmissible pursuant to § 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 entry into the United States in 1985 and 1991 using a passport with names other than her own. She seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the U.S. with her husband.

The district director denied the applicant's Application for Waiver of Grounds of Excludability (Form I-601), because she determined that the applicant had failed to establish that her husband would experience extreme hardship on account of her inadmissibility. On appeal, counsel asserts that the applicant's husband will experience extreme emotional and financial hardship if the applicant is removed. The AAO has reviewed all the documentation on the record and concurs with the district director's decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to § 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The Board of Immigration Appeals (BIA) case, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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.

In his statement dated November 3, 2008, the applicant's husband writes that the applicant takes care of him and his grandchildren, and that he would miss her greatly if she is separated from him. He also states that he was extremely worried about the applicant's health in 1997, when she suffered a brain aneurysm and required surgery. The applicant's husband asserts that he cannot relocate to the Philippines to accompany the applicant.

Counsel notes that the applicant's husband does not speak English very well, but the applicant does, a factor which is of assistance to her husband. Counsel contends that the applicant's removal would cause her husband financial difficulties, in addition to "insurmountable grief." There is no doubt that the applicant's husband would be emotionally affected by the applicant's removal, and that he would be faced with difficult choices. The documentation on the record, however, does not establish that the applicant's husband would be unable to support himself or to care for himself in the applicant's absence. The evidence does not indicate that the applicant's husband's business is dependent on the applicant's presence, or that her removal would cause him more difficulties and suffering than is usually encountered in similar situations.

The AAO acknowledges that it has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, it is also noted that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she 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 § 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.