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U.S. Citizenship  
and Immigration  
Services

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FILE:  Office: LOS ANGELES, CALIFORNIA Date: MAR 23 2005

IN RE: Applicant: 

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, 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 his marriage to a 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 using a fraudulent passport and visa. He 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 his wife and two children.

The district director determined that the applicant had failed to establish that his wife would undergo extreme hardship on account of his inadmissibility, and she denied the waiver application. On appeal, counsel asserts that the applicant's U.S. citizen wife and lawful permanent resident (LPR) mother would both suffer severe hardship in the applicant's absence. In support of this contention, counsel submits an evaluation prepared by a licensed clinical social worker for the applicant's wife, as well as information regarding the applicant's household budget.

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. Section 212(i) of the Act does not list children as qualifying relatives for extreme hardship purposes. 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.

Counsel states that the applicant's wife would "experience extreme hardship if separated from the life that she has built here." Counsel asserts that the applicant's wife is currently suffering severe depression, which would worsen if the applicant is removed. In addition, counsel indicates that the applicant's wife would suffer a marked reduction in her standard of living if the applicant is removed.

On appeal, counsel submits a psychological report prepared by [REDACTED] M.S.W., L.C.S.W., based on a single meeting of undetermined duration with the applicant's wife on November 4, 2003. There is no evidence that Ms. [REDACTED] conducted therapy with the applicant's wife prior to or subsequent to their meeting, nor is there evidence that the applicant's wife has ever sought medical treatment for any symptoms related to stress, anxiety, or depression. Ms. [REDACTED] reports that the applicant's wife is suffering from depression which manifests itself through numerous physical symptoms, such as insomnia, exhaustion, lack of concentration, and overeating. Ms. [REDACTED] also notes that the applicant's wife mentioned "a previous suicide attempt a few years ago." No further information regarding the impact of such an incident was provided. Moreover, Ms. [REDACTED] did not recommend that the applicant's wife undergo psychiatric treatment or psychological therapy to relieve her symptoms. The record does not establish that the applicant's wife is experiencing or will experience emotional hardship beyond that which is normal in similar situations.

Counsel asserts that the applicant's wife will experience extreme financial hardship if she remains in the United States without the applicant, as she will be unable to support their two children and her mother-in-law or pay the mortgage and other bills without his financial assistance. The record does not demonstrate that the applicant will be unable to contribute to his family's budget while he is in the Philippines. The record also does not establish that the applicant's wife would be unable to make necessary financial adjustments in his absence. The evidence does not establish that the applicant's inadmissibility will cause his wife, a nurse, to suffer extreme hardship.

Counsel does not contend that the applicant's mother would suffer extreme hardship if she chose to relocate to the Philippines to accompany the applicant. Counsel states, however, that the applicant's mother suffers from several health problems, and she depends on the applicant for emotional support and to take her to doctors' appointments. On appeal, counsel submits a copy of a doctor's prescription slip showing that the applicant's mother suffers from coronary arterial disease. Nevertheless, the record does not establish that the applicant's presence is necessary for his mother's health and wellbeing.

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 (9<sup>th</sup> Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3<sup>rd</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 his U.S. citizen spouse or LPR mother 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 § 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.