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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date:

MAY 17 2005

IN RE:

[Redacted]

PETITION:

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 PETITIONER:

[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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, 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 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 attempted to procure 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 his spouse and child.

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 January 20, 2004.

On appeal, counsel states that Citizenship and Immigration Services erred and committed grave abuse of discretion in denying the application for waiver of grounds of inadmissibility. *Form I-290B*, dated February 6, 2004.

In support of this assertion, counsel submits a brief and copies of articles addressing country conditions in the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that, during October 1995, the applicant obtained admission to the United States using a Philippine passport with a United States visitor visa 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 himself 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).

The AAO acknowledges counsel's assertion that the instant case is similar to the one presented by *Tukhowinich v. INS*, 64 F.3d 460 (9th Cir. 1995). The AAO notes that *Tukhowinich* was a suspension of deportation case. Although waiver proceedings pursuant to section 212(i) of the Act and suspension of deportation proceedings pursuant to section 244 of the Act share consideration under a standard of extreme hardship, they differ in a significant respect; section 244 of the Act provides for consideration of extreme hardship imposed on the alien himself or herself while section 212(i) does not. 8 U.S.C. § 1254(a)(1). The assertions of counsel fail to recognize this distinction and are therefore unpersuasive.

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 residence in the Philippines will expose her and the couple's son to danger because the Philippines is considered the kidnapping capital of the world. *Appeal Brief*, dated February 6, 2004. Counsel insists that the applicant's spouse and child are probable targets for kidnapping owing to their status as United States citizens. *Id.* at 5. Counsel submits several copies of articles appearing in *The Manila Times* in support of these assertions. Further, counsel contends that the applicant's marriage to his current spouse would not be recognized in the Philippines. *Id.* at 6. Counsel explains that the Philippines is a conservative country and therefore its laws still consider the applicant to be married to his previous spouse rendering his current spouse a "concubine." *Id.* The AAO notes that counsel fails to provide documentation in support of his assertions regarding Philippine societal norms.

The record fails to establish extreme hardship to the applicant's spouse if she remains in the United States in order to maintain her safety and the safety of her child as well as residence in her adoptive country. Counsel asserts that the applicant is the sole income provider for the family and his absence will leave his spouse and child to "live in the streets." *Id.* at 4. The record fails to reflect the dire situation asserted by counsel. The record fails to establish that the applicant's spouse is unable to financially support herself in the absence of the applicant.

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, her situation, if she 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 he 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.