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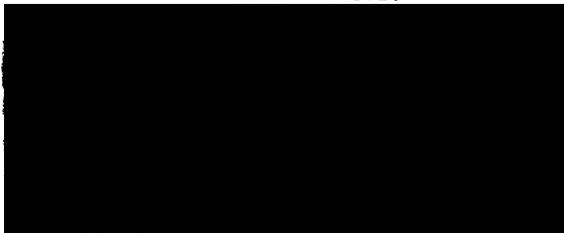
Office: LOS ANGELES, CA

Date: NOV 21 2005

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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 District Director, Los Angeles, CA denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) in Washington, DC 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse, the only qualifying relative. The application was denied accordingly. *Decision of the District Director*, June 17, 2004.

On appeal, counsel contends that the district director abused her discretion by failing to give proper weight to the evidence presented in support of the claim that the applicant's removal would result in extreme hardship to his U.S. citizen wife.

The entire record, including the brief submitted by counsel on appeal, country information submitted by counsel, the affidavit of the applicant's wife, the decision of the district director and the immigration documents and supporting material filed and created pursuant to this matter will be reviewed and considered.

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.

Section 212(i) of the Act provides that:

- (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 record indicates that on March 15, 1990, the applicant gained admission into the United States by presenting a false passport. He is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of inadmissibility is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. The only qualifying relative indicated is the applicant's US citizen spouse. Any information regarding potential hardship to the applicant's

two U.S. citizen children is irrelevant to a waiver under section 212(i) and will not be considered. If extreme hardship to the applicant's spouse 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 Bureau 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 contends that the applicant presented numerous factors, which considered cumulatively amount to extreme hardship to the applicant's spouse if the applicant is removed from the United States. The applicant's spouse lawfully immigrated to the United States in December 1984. She married the applicant on May 26, 1990 and has lived with him in the United States since then. She has two United States citizen children and is a citizen herself. She has an elderly and ill mother who lives with her in the United States and is a lawful permanent resident. One of her brothers, and his family, lives in the United States. Her children do not speak Tagalog. The employment market in the Philippines is difficult for a woman of her age and specialization. Security concerns in the Philippines would cause her to fear for the safety of her U.S. citizen children. Although she works, she would be forced to get a second job to support her children if she remained in the United States. She would be unable to maintain the family home without the support of her husband's income. She would either be separated from her husband if she stayed in the United States or her mother if she moved to the Philippines and either separation would cause emotional stress. *See Brief of Counsel*, pages 3-4; *see also, Affidavit of Maribel Soberano Soller*.

U.S. court decisions have held that the common results of removal are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *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. Counsel has presented information that demonstrates that the removal of the applicant would cause difficulties for the applicant's wife and her family. There would be a significant negative effect upon the emotional and financial situation of the applicant's wife. The viability of the family as a family unit would be at risk.

While the difficulties facing the applicant's wife if her husband is removed should not be minimized, there is nothing in the record to indicate that such hardship is more severe than that described by the phrase "common result of removal." The evidence does not indicate that the applicant's wife cannot support herself in the United States if her husband is removed. The record indicates that she had worked in the same profession for thirteen years when the application was filed. *See Affidavit of Maribel Soberano Soller*, Page 3. The applicant's wages for the tax year 2000 were \$73,079.60, an income sufficient to support the applicant's wife

and children. *See Form W-2 Wage and Tax Statement 2000, for Maribel Soller.* The U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). There is insufficient evidence to conclude that the economic detriment to the applicant's wife would amount to extreme hardship. While separation from her spouse or mother would cause emotional stress, there is no medical or psychological evidence to indicate that separation would cause insurmountable physical or psychological harm. The harm described does not go beyond the emotional harm to be expected from separation caused by one spouse's removal. It is not out of the ordinary and does not amount to 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 husband 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 section 212(a)(6)(C) 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.