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**U.S. Citizenship
and Immigration
Services**

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OCT 27 2005

FILE: 

Office: MANILA, PHILIPPINES

Date:

IN RE: 

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: SELF-REPRESENTED

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 Acting Immigration Attaché, Manila Philippines. 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant 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.

The acting immigration attaché 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 Acting Immigration Attaché*, dated May 12, 2004.

On appeal, the applicant states that the evaluating officer was unable to fully assess the totality of the circumstances regarding his application. *Form I-290B*, dated May 28, 2004. In support of this assertion, the applicant submits a brief, dated June 10, 2004; copies of medical records of the applicant's spouse; newspaper articles relating to conditions in the Philippines and a United States Department of States Public Announcement, dated December 21, 2003. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that, on October 29, 1997, the applicant attempted to obtain entry into the United States by presenting a fraudulent visa to immigration officials.

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).

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.

On appeal, the applicant contends that his spouse would suffer extreme hardship if she relocated to the Philippines in order to reside with the applicant. Although the Philippines is the home country of the applicant's spouse as well as the applicant, the applicant states that his spouse has not resided in the Philippines since 1993 and that her entire family resides in the United States. *Motion to Reopen Denial of Application for Waiver of Ground of Excludability*, dated June 10, 2004. The applicant indicates that his spouse suffers from hypertension and diabetes and that the absence of quality health care in the Philippines would jeopardize her health. *Id.* at 3. The applicant additionally contends that his spouse would be unable to obtain employment in the Philippines as discriminatory practices favoring young, attractive candidates are tolerated in hiring. *Id.* at 3-4. In support of this assertion, the applicant submits employment listings stating age and personality requirements. The applicant also states that his spouse would be exposed to danger as an American citizen living abroad as evidenced by the public announcements of worldwide caution issued by the United States Department of State. *See Public Announcement*, dated December 21, 2003.

The record fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States in order to maintain proximity to adequate health care and employment and security from the threats that face United States citizens abroad. The applicant contends that his spouse's medical ailments have been compounded by their separation. *Motion to Reopen Denial of Application for Waiver of Ground of Excludability* at 3. He indicates that she has lost consciousness and been rushed to the hospital as a result of elevated stress levels and submits copies of medical records for treatment received during 2003 and 2004 by his spouse. *Id.* While this situation is unfortunate, the record fails to demonstrate that the medical condition of the applicant's spouse cannot be controlled by medication. Moreover, the record fails to establish that the health of the applicant's spouse would be measurably improved by the presence of the applicant, particularly since the record reflects that the applicant and his spouse have never resided together as husband and wife.

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 endures hardship as a result of separation from the applicant. However, her 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 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.