

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES DISTRICT OFFICE

Date: **AUG 28 2006**

IN RE:

[REDACTED]

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

ON BEHALF OF APPLICANT:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed. The application will be denied.

The applicant [REDACTED] is a native and citizen of the Philippines who was found to be inadmissible to the United States under 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 procured admission into the United States by fraud or willful misrepresentation in 1990. She married a citizen of the United States, [REDACTED] in 1995 and is the beneficiary of an approved Petition for Alien Relative. [REDACTED] 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 her husband and daughter.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 23, 2000. The decision of the District Director was affirmed on appeal by the AAO. *Decision of the AAO*, dated May 15, 2001.

On motion to reconsider, counsel asserts that both the District Director and the AAO “made errors of law which have the potential to effect [sic] the outcome . . . [and] . . . failed to adequately and properly consider or analyze the facts.” *Motion to Reconsider*, dated June 18, 2001. More specifically, counsel states that the AAO erred in its interpretation of the law regarding “after-acquired equities” and failed to consider evidence of extreme hardship submitted by [REDACTED] qualifying relatives. *Id.*

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In light of counsel’s assertions noted above, the case was reviewed *de novo* as to all questions of law, fact, discretion, or any other issue arising in [REDACTED] appeal that falls under the AAO’s jurisdiction. The entire record was reviewed and considered in rendering this 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.

Section 212(i) of the Act provides that:

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 reflects that [REDACTED] used a fraudulent passport and visa for entry into the United States in 1990. As a result of this prior misrepresentation, she was found to be inadmissible to the United States. Counsel does not contest this finding.

On appeal and in her Motion for Reconsideration, counsel for the applicant asserts that [REDACTED] has shown that a qualifying relative, in this case, either her husband or mother, both of whom are U.S. citizens, or her lawful permanent resident father, will suffer extreme hardship if she is not permitted to reside in the United States. *Brief in Support of Appeal*, dated July 18, 2000; *Motion to Reconsider, supra*.

Attachments to the above referenced Brief in Support of Appeal and [REDACTED]'s I-601 include, but are not limited to: (1) proof of [REDACTED] graduation from the University of Santo Tomas in Manila in 1987 with a Bachelor of Arts degree; (2) proof of status for [REDACTED] father as lawful resident and for her mother and husband as U.S. citizens; (3) marriage certificate for [REDACTED] Los Angeles on June 30, 1995; (4) birth certificate of the [REDACTED] daughter, [REDACTED] on October 28, 1996 in Los Angeles; (5) medical records indicating that [REDACTED] had surgery ("dilatation and curettage of uterus") on December 9, 1999; (6) payment records [REDACTED] Trucking Company; (7) joint financial and insurance records for [REDACTED] including escrow and tax statements for their home; (8) medical records, including various prescriptions for [REDACTED] mother, father [REDACTED] a doctor's note dated July 17, 2000 stating that [REDACTED] mother has been a clinic patient since March 23, 2000 and is being treated for asthma, and a doctor's note stating that [REDACTED] has allergies to egg, chicken and peanuts; and (9) tax forms for 1995 indicating that [REDACTED] had gross receipts of approximately \$45,000.

Other attachments comprise various affidavits from family members describing a loving and interdependent relationship between [REDACTED] and her immediate family and expressing how much they would suffer if she were not permitted to reside in the United States: (1) [REDACTED] declaration, dated May 25, 1999, noting his love for and dependence on [REDACTED] describing how important she is in his life and the life of their young daughter, how he could not bear to be apart from them, the fact that his and his wife's parents and siblings reside in the United States, and stating how stressful it would be for him to have to decide whether to stay in the United States without her or move to the Philippines with her and their daughter; (2) supplemental affidavit by [REDACTED] dated July 14, 2000, stating, *inter alia*, that his wife suffered a miscarriage the previous year, causing suffering that they were able to endure only with the emotional support of their extended families in the United States and that the circumstances brought the entire family closer; that he and their daughter would suffer severe and serious hardship if [REDACTED] were not permitted to remain in the United States; that their daughter is very close to her mother and it would pain him deeply to see them

separated, adding to the difficulties he himself would endure; that the Philippines is economically depressed, making it difficult for people to find jobs and support their families and that his work as a truck driver would have no value there; that his daughter [REDACTED] eczema and would suffer from lack of medical expertise and reduced standards of hygiene and sanitation in the Philippines; and that his parents and nine siblings, all either U.S. citizens or lawful permanent residents, reside in the United States, as do his wife's parents, who are in poor health and extremely close to his wife; (3) an affidavit by [REDACTED] father, dated July 14, 2000, stating that he lives with his daughter, son-in-law and their [REDACTED] and that he works as an agricultural aid with the State of California; that his daughter takes care of his daily needs, helps oversee his finances and provides for him in any way that she can; that he had a mild heart attack in 1993 and does not know how he could manage without the love and support of his daughter; he reiterates the concerns stated in [REDACTED] affidavit over conditions in the Philippines, lack of work opportunities there and how [REDACTED] health problems, food allergies and eczema, would be exacerbated if she moved there; (4) an affidavit by Mrs. [REDACTED] mother, reiterating the same concerns regarding conditions in the Philippines [REDACTED] health, and adding that though she does not live with her daughter, they live two hours from each other and see each other at least once a week and that [REDACTED] is always willing to take her to the doctor; and that, knowing how loving the couple is, it would pain her to see them separated.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. In examining whether extreme hardship has been established, the BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Hardship the applicant herself experiences upon deportation is not relevant to section 212(i) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives. Hardship suffered by the applicant or the couple's child, however, will be considered insofar as it results in hardship to a qualifying relative in

the application, in this case, the applicant's U.S. citizen husband, U.S. citizen mother, and lawful permanent resident father.

This matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to [REDACTED] qualifying relatives must be established in the event that they accompany her to the Philippines or in the event that they remain in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires [REDACTED] to establish extreme hardship to either her husband, mother or father, in the event that they relocated to the Philippines. The record in this case reflects that Mr. [REDACTED] born in the Philippines in 1963, came to the United States in 1984, and has resided in the United States since then; his parents and siblings, all of whom are U.S. citizens or lawful permanent residents, also reside in the United States; his parents are both over 70 and have health problems. He is the owner-operator of a trucking business and is able to support his family with his income from the business. He and his wife purchased a home together. [REDACTED] was born in the Philippines in 1966 and came to the United States in 1990. She has a college degree from the Philippines, and she indicates on her marriage certificate and tax return for 1995 that she is a bookkeeper. She and [REDACTED] were married in 1995, and they have a daughter who was born in 1996 in California. According to affidavits in the record, [REDACTED] father is 69, lives with the [REDACTED] and is employed; her mother is 68 and lives with a sister of [REDACTED]. Medical records indicate that her father takes medicine for hypertension, her mother is being treated for asthma, and that her daughter suffers from food allergies.

The AAO recognizes that [REDACTED] and his family would suffer economic detriment and their wage-earning potential would be diminished if they moved to the Philippines, and that the standard of living, including health benefits, for the couple and their child would be reduced. The BIA has generally not found financial hardship alone to amount to extreme hardship. *Matter of Cervantes-Gonzalez, supra*, at 568 (citations omitted). It is one of the relevant factors to be considered, however, in the analysis of extreme hardship; and in this case, [REDACTED] would also lose his business and his home, and he would be separated from his extended family, including his elderly parents and siblings. These factors lead to a conclusion that [REDACTED] would indeed suffer extreme hardship if he chose to move to the Philippines to avoid his and his child's separation from his wife. Similarly, [REDACTED] parents would suffer extreme hardship if they chose to relocate to the Philippines, as they too have extended family ties in the United States and, given their age and health concerns, would suffer both financially and physically from such a move.

The second part of the analysis requires the applicant to establish extreme hardship to her qualifying relatives in the event that they remain in the United States separated from the applicant. [REDACTED] two affidavits and affidavits in the record from family members indicate that [REDACTED] has a strong and loving attachment and is devoted to his wife and young daughter and that he is dependent on his relationship with them for his emotional well-being. [REDACTED] is the main caretaker for their daughter while [REDACTED] works. He does not want his daughter to suffer from the loss of her mother's care, but also states that he fears his daughter's health and welfare would suffer in the Philippines. He states that it would pain him deeply to see them separated. Similarly, [REDACTED] parents do not want to see their daughter separated from her husband and child, and they have clearly stated their love for their daughter.

[REDACTED] is able to support his family from his business. If his wife were forced to relocate to the Philippines, there would be the additional expenses of maintaining a separate household. However, there is no evidence in the record that [REDACTED] would be unable to find work in the Philippines. She would face the challenge of finding employment, but her education, a college degree from the Philippines and bookkeeping skills, are assets in that regard. [REDACTED] would be faced with the challenge of making alternate arrangements for the care of their child and coping with other lifestyle changes. It is clear that if he chooses to remain in the United States, he will also suffer because he and his child do not have the companionship and care of [REDACTED]. These are hardships normally associated with family separation, including emotional and personal hardships. There is no evidence in the record, however, to show additional hardship [REDACTED] would suffer if the applicant were denied a waiver of inadmissibility. His situation, based on the record, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship. Similarly, there is nothing in the record to show that [REDACTED] parents depend on their daughter for financial support or health care; though they too will suffer emotionally if they choose to remain in the United States separated from their daughter. As with [REDACTED] their situation is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship. It appears that they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if [REDACTED] is refused admission and he chooses to remain in the United States; nor does the evidence support a finding that her parents would face extreme hardship in that situation. 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). In addition *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further, in upholding the BIA's decision, that "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'"

The AAO recognizes that [REDACTED] and the parents of [REDACTED] will endure hardship as a result of separation from [REDACTED]. In this case, the record does not contain sufficient evidence to show that the hardship faced by a qualifying relative rises beyond the common results of removal to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative as required under Section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant

statutorily ineligible for relief, no purpose would be served in discussing whether she 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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion for reconsideration is granted and the appeal will be dismissed.

ORDER: The motion is granted. The decision of May 15, 2001 dismissing the appeal is affirmed. The application is denied.