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Office: LOS ANGELES

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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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application and it 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the father of U.S. citizen children. He 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 children.

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 March 29, 2005.

The record reflects that, on March 10, 2000, the applicant was admitted to the United States as a nonimmigrant visitor by presenting fraudulent documentation under the name [REDACTED]. On December 24, 2002, the applicant married his spouse, [REDACTED] who was a lawful permanent resident at the time. On May 26, 2004, [REDACTED] became a naturalized U.S. citizen. On August 3, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On December 13, 2004, the applicant appeared at Citizenship and Immigration services' (CIS) Los Angeles, California, District Office. The applicant admitted that he had entered the United States under an assumed name. On July 27, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the district director erred in finding that the applicant did not establish his spouse would suffer extreme hardship. *Applicant's Brief*, dated May 27, 2005. In support of these assertions, counsel submitted only the above-referenced brief. The entire record was reviewed and considered in rendering a decision in this case.

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.

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- (iii) Waiver authorized. — For provision authorizing waiver of clause (i), see subsection (i).

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.

The district director based the applicant's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission that he entered the United States under an assumed name. Counsel does not contest the district director's finding of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 at 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 alien 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. 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).

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 record reflects that [REDACTED] is a native and citizen of the Philippines who became a lawful permanent resident in 1996 and a naturalized U.S. citizen in 2004. The applicant and [REDACTED] have a three-year old son who is a U.S. citizen by birth. [REDACTED] has a thirteen-year old and a twelve-year old daughter from a previous relationship who are both natives and citizens of the Philippines who became lawful permanent residents in 1999. [REDACTED] also has an eight-year old son from a

previous relationship who is a native and citizen of the Philippines who became a lawful permanent resident in 2003. Counsel asserts that the applicant and all of [REDACTED] children are U.S. citizens. However, the record reflects that her children from a prior relationship are lawful permanent residents and not U.S. citizens. The record reflects that the applicant and [REDACTED] three-year old son suffers from asthma. The record reflects further that the applicant and [REDACTED] are in their 40's, and there is no evidence that [REDACTED] has any health concerns.

Counsel asserts that [REDACTED] would suffer extreme hardship if she were to remain in the United States without the applicant because they have four children whom the applicant helps to raise, the applicant runs the household and provides support to [REDACTED] is able to provide additional attention to her three-year old son, who suffers from a persistent cough and asthma, only due to the applicant's assistance with the other children in the household, and without the applicant's income [REDACTED] would be unable to continue to meet the mortgage payments on a recently purchased house. In her affidavit, [REDACTED] asserts that the father of her children from a previous relationship does not take much interest in them and has contact with them only occasionally. [REDACTED] also states that the applicant is the backbone of the family who takes care of the other children when her three-year old son's cough flares up and she has to pay additional attention to him. [REDACTED] states that her son has to take medication daily and the doctor must monitor his condition. [REDACTED] asserts that she does not know how she will manage the household and find time to work full time without the applicant's assistance. She states she will have to sell the house they recently purchased and move to an apartment. Finally, [REDACTED] states that she cannot imagine her life without the applicant in it as she would be losing a part of herself and her children would lose a father.

Financial records indicate that, in 2002, [REDACTED] earned approximately \$24,921. Additionally, documentation in the record reflects that [REDACTED] ex-spouse is required by the divorce settlement to pay all housing expenses for the three children that resulted from the marriage. The record shows that, even without the assistance of the applicant or her ex-husband, [REDACTED] in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that [REDACTED] may have to lower her standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

The medical documentation in the record indicates that [REDACTED] three-year old son has a history of recurrent reactive airway disorder (a.k.a. asthma) that requires close supervision, frequent care and medication that may need to be administered up to four times a day. The medical documentation notes that there are three other children in the household and that, since there are so many other young children, the presence of both the applicant and [REDACTED] is required and it would be deleterious to the three-year old son's health if both parents were not available to care for him and his siblings, especially during the times of the three-year old son's asthma exacerbations. The medical documentation does not indicate whether it is medically necessary for the applicant's son to be cared for by a parent rather than another individual, such as an alternative family member or a hired caretaker. The medical documentation does not provide a medical reason for the conclusion that both parents' presence is required in the care of the applicant's son, relying heavily on the conclusion that both parents' presence are required to care for such a number of young children in the household. The medical documentation can therefore be given little weight.

There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] would essentially become a single parent, professional childcare may be an added expense and not equate to the care of a parent, and her children would be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that [REDACTED] has family members in the United States, such as her sister, who may be able to assist her financially, physically and emotionally in the absence of the applicant.

Counsel asserts that [REDACTED] would suffer extreme hardship if she were to accompany the applicant to the Philippines. However, [REDACTED] in her affidavit, states that she would not return to the Philippines with the applicant because of her son's health. Therefore, the AAO cannot find that [REDACTED] would suffer extreme hardship if she were to accompany the applicant to the Philippines. Additionally, the AAO notes that, as a U.S. citizen or lawful permanent residents, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse 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 he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.