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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

JUL 07 2006

IN RE:

[REDACTED]

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:

[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, CA, 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 (U.S.) 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 on September 28, 1990. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that her U.S. citizen spouse would suffer extreme hardship as a result of her removal. The application was denied accordingly. *Decision of the District Director*, dated November 22, 2004.

On appeal, counsel submits new evidence to establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. *Counsel's Brief*, December 17, 2004.

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 September 28, 1990 the applicant presented a Filipino passport to procure entry into the United States with a name and birth date that were not her own. Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien herself experiences or their child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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 notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or in the event that he resides in the United States, as he is not required to reside

outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in the Philippines. Counsel states that the applicant's spouse will not move to the Philippines because he was born in the United States, all of his family is in the United States and he owns a home in the United States. In addition, the applicant's family resides in Canada and not the Philippines so the couple would have no support system if they were to relocate. The applicant did not submit any documentation concerning country conditions in the Philippines and his ability to find employment, housing, health care and other necessities without the help of family members. Furthermore, the AAO notes that relocation to a foreign country generally involves some inherent difficulties, however, the current record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel asserts that the primary hardship that will be suffered if the applicant is removed to the Philippines is separation of the family unit. The applicant's spouse states in his affidavit that he and the applicant have been together for 13 years and married for seven years. The applicant, after undergoing many medical procedures in an effort to become pregnant, at the time of filing this application was five months pregnant. The applicant's spouse states that he and the applicant are extremely close and it would be devastating for their family to be separated. Counsel refers to the Ninth Circuit case, *Mejia-Carrillo v. INS*, 656 F.2d 522, 522 (9<sup>th</sup> Cir. 1981) to support his claim that the applicant's family separation is enough to establish extreme hardship. A review of *Mejia-Carrillo* reflects that the case is a suspension of deportation case in which hardship to the alien was considered. In waiver proceedings under section 212(i) of the Act hardship to the applicant cannot be considered. Furthermore, even within the context of a suspension of deportation case, the Ninth Circuit never stated in *Mejia-Carrillo* that separation from family alone establishes extreme hardship. Rather, the Ninth Circuit stated that separation from family alone *may* establish extreme hardship. However, the Ninth Circuit did not analyze or make a finding regarding whether the applicant's separation from family established extreme hardship in the case. The Court instead remanded the case to the BIA for consideration of all the non-economic hardship factors in the case, including separation from family. Thus, *Mejia-Carrillo* does not support a finding of extreme hardship in this case.

The AAO notes that counsel's brief emphasizes the hardship that the applicant and her child will suffer. As noted above, these factors cannot be considered unless they cause hardship to the applicant's spouse. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 (9<sup>th</sup> Cir. 1991). 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. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.