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U.S. Department of Homeland Security
20 Mass. Rm. 3000,
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES

Date:

JUL 13 2006

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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the mother of one U.S. citizen child. She 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 her spouse and child.

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 January 11, 2005.

The record reflects that, on March 2, 1991, the applicant married her spouse, [REDACTED] Mr. [REDACTED]. On January 4, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's spouse. On June 4, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office. The applicant admitted to procuring admission to the United States in 1988 by presenting a passport and visa belonging to another, under the name '[REDACTED]'.

On June 4, 2001, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director failed to evaluate and consider all the available factors in determining whether the applicant's family would suffer extreme hardship. *See Applicant's Brief* dated February 8, 2005. In support of her contentions, counsel submitted the above-referenced brief, a new affidavit from the applicant's spouse, a chiropractic letter, school records for the applicant's child and country conditions reports for the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

- (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 finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admitted use of a passport and visa belonging to another in order to procure admission into the United States in 1988. The applicant does not contest the district director's determination of inadmissibility.

Hardship to the alien herself 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 child 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 Mr. [REDACTED] is a native of the Philippines who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1999. The applicant has a 14-year old son who is a U.S. citizen by

birth. The applicant and Mr. [REDACTED] are in their 50's and Mr. [REDACTED] and the applicant's child do not have any health concerns.

Counsel contends that the most important factor in determining extreme hardship is separation from family. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), The Ninth Circuit Court of Appeals (the Ninth Circuit) held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute extreme hardship, the hardship must still be beyond the common results of deportation to constitute "extreme hardship."

Counsel contends that Mr. [REDACTED] would suffer financial and emotional hardship if he were to remain in the United States without the applicant because Mr. [REDACTED] would be separated from his wife and he would be forced to financially support his family and raise his son by himself, which would be compounded by the fact that he works off-shore for periods of time during which he would have to submit his son to care by strangers. Counsel also contends that the applicant requires treatment for injuries she sustained during a 2003 assault on her and that she also has depression and psychological issues arising out of the incident. Mr. [REDACTED] in his affidavits, states that if the applicant is returned to the Philippines there would be no one to take care of his son while he is at sea.

Financial records indicate that, in 1998, Mr. [REDACTED] contributed \$22,599, while the applicant contributed \$11,726 to the household income. The record contains no evidence of the costs associated with maintenance of the household. The record reflects that the applicant has family members, such as her father, and Mr. [REDACTED] has family members, such as his brothers, in the United States who may be able to provide financial assistance in the absence of the applicant. The record shows that, even without assistance from family members, Mr. [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that Mr. [REDACTED] may have to lower his standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

There is no evidence in the record to suggest that Mr. [REDACTED] or the applicant's son suffer from a physical or mental illness that would cause Mr. [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon deportation. There is no evidence in the record to confirm that the applicant was assaulted in 2003 or that she suffers from psychological problems as a result. The chiropractic letter in the record indicated that the applicant was being treated for a spinal condition and that the treatment would conclude no

later than December 2005. There is no evidence in the record that the applicant suffers from a physical or mental illness for which she would be unable to receive treatment in the Philippines which would in turn cause emotional hardship to Mr. [REDACTED] that is beyond that normally suffered by families upon an alien's deportation. While it is unfortunate that Mr. [REDACTED] would essentially become a single parent and professional childcare may be expensive and may not equate to the care of a mother, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, there is evidence in the record that the applicant has worked away from the household since 1997, indicating that the applicant's son may already have alternative care during the periods in which the applicant and Mr. [REDACTED] are absent from the home. Finally, according to the record, the applicant and Mr. [REDACTED] have family members in the immediate vicinity who may be able to support him emotionally and physically in the absence of the applicant.

Counsel contends that Mr. [REDACTED] will suffer extreme hardship if he were to accompany the applicant to the Philippines. In his affidavit, Mr. [REDACTED] states that if he returned to the Philippines he would be separated from his family in the United States, he has no family remaining in the Philippines, he would find it difficult to obtain employment due to the economy, he is uncertain the applicant would be able to obtain treatment for her psychological problems in the Philippines, he may be unable to afford to send his son to private school and his son would find it difficult to adjust to the educational system, culture and language.

There is no evidence in the record to suggest that Mr. [REDACTED] and the applicant would be unable to obtain any employment in the Philippines. As discussed above, there is no evidence in the record to suggest Mr. [REDACTED] the applicant or the applicant's son suffer from a physical or mental illness for which they would be unable to receive treatment in the Philippines. The record reflects that the applicant has family members in the Philippines, who may be able to provide financial and emotional support. The record contains no evidence as to whether the applicant's son would be denied a proper education in the Philippines without attending a private school. Moreover, while the hardships Mr. [REDACTED] faces are unfortunate, the hardships he faces with regard to adjusting to a lower standard of living, separation from family in the United States, and his child's adjustment to a new educational system, culture and language, are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Finally, the AAO notes that, as U.S. citizens, the applicant's spouse and son 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, Mr. [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

Counsel asserts that Mr. [REDACTED] would not remain in the United States without the applicant and that, as such, a finding that he would suffer extreme hardship in the Philippines is sufficient to warrant a grant of the waiver application. However, in order for the applicant to prove extreme hardship to her spouse she must also show that he would suffer extreme hardship if he were to remain in the United States without the applicant as there is no law that requires him to leave with 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 Mr. [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 her 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 she 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.