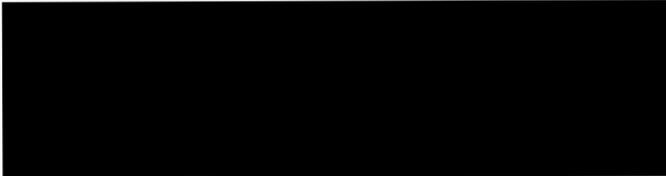




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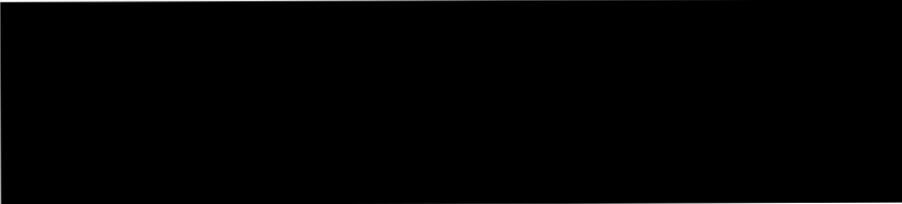
Date: JUN 09 2006

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 PETITIONER:



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 District Director, San Francisco, 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 son of two naturalized U.S. citizens. 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 mother and father.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 8, 2004.

The record reflects that, on October 3, 2002, 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 U.S. citizen father. On June 9, 2003, the applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco District Office. The applicant admitted to procuring admission to the United States by presenting a fraudulent Philippine passport and U.S. nonimmigrant visa, under the name [REDACTED] in 1985.

On August 29, 2003, 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 submitted an affidavit from the applicant's mother and medical documentation for the applicant's mother. 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) of the Act on the applicant's admitted use of a fraudulent passport and U.S. nonimmigrant visa to procure admission into the United States in 1985. Counsel does not contest the district director's determination 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.

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 the applicant's mother, [REDACTED], is a native of the Philippines who became a lawful permanent resident of the United States in 1983 and a naturalized U.S. citizen in 1993. The applicant's father, [REDACTED] is a native of the Philippines who became a lawful permanent resident of the United States in 1983 and a naturalized U.S. citizen in 1989. The applicant is in his 40's, [REDACTED] and [REDACTED] are in their 60's and have some health concerns.

In their affidavits, [REDACTED] and [REDACTED] assert that they would suffer extreme hardship if they were to remain in the United States without the applicant. [REDACTED] her affidavit, states, "my husband and I will suffer from extreme hardship . . . I have been suffering from severe carpal tunnel syndrome complicated by severe arthritis . . . these medical conditions have been extremely difficult for me to function normally . . . I also frequently experience symptoms of chest pain and shortness of breath . . . my husband . . .

was diagnosed of [sic] early symptoms of dementia, memory loss and diminished concentration . . . I could not take care of him because of my own medical problem . . . both my husband and I are very sickly and we can only depend on our son, [REDACTED] for financial help and physical care . . . [REDACTED] current immigration status also makes us worry all the time and contributes to the depreciation of our health . . . I am scared that he will be separated from us. I worry about who will provide and take care of me and my husband if we become too ill to care for one another.”

[REDACTED] in his affidavit, states he “will truly suffer from extreme hardship . . . he lives with us and has been providing for our needs whenever necessary. He provides financial help and takes care of us in times of illness . . . my wife is sickly and unemployed. She depends much on [REDACTED] for most of her needs because I was too sickly . . . I am showing early symptoms of dementia, memory loss and diminished concentration. I have a partial disability due to [sic] past work injury for which I underwent surgery. My doctor attributes part of the condition to frequent anxiety and depression which in turn is caused by constant worries and work fatigue . . . I worry about his immigration status and [sic] scared that he will be separated from us . . . I worry about who will provide and take care of me and my wife if we become too ill to care for one another.”

Financial records indicate that, in 2002, even after [REDACTED] claims to have been debilitated and [REDACTED] claims to have suffered partial disability due to surgery, [REDACTED] earned \$51,430 and [REDACTED] earned \$26,084. The record does not reflect that any injuries or illnesses from which [REDACTED] and [REDACTED] suffer affects their earning potential or that they would be unable to support themselves financially without the assistance of the applicant. The medical documentation in the record indicates that [REDACTED] was seen by a doctor for carpal tunnel in 2000, but that another doctor, in 2003, found that she did not suffer from carpal tunnel but was experiencing symptoms of tendonitis which was solved through physical therapy.

The medical documentation does not indicate that [REDACTED] has arthritis or that she is unable to function normally. The medical documentation does indicate that [REDACTED] was successfully treated for sciatica with physical therapy in 2001 and that she experiences rashes from an unknown irritant. The medical documentation indicates that while [REDACTED] complained of chest pain and shortness of breath her chest x-rays were clear. The AAO notes that the doctor found that [REDACTED] had quit smoking within 12 months of her breathing complaints. The medical documentation indicates that [REDACTED] has not reported any furthering breathing problems since 2001. None of the medical documentation submitted contains a diagnosis, prognosis or an indication that [REDACTED] is receiving ongoing treatment for her claimed medical ailments, or that assistance is required for [REDACTED] to function on a daily basis. There is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation.

In support of [REDACTED] assertions in regard to his health, counsel only submitted a letter from [REDACTED], a print-out confirming [REDACTED] to underwent surgery, and two work status reports. As stated above, financial documentation indicates that [REDACTED] earning potential does not appear to have been affected by the injuries/illnesses reported in the medical documentation provided. The print-out confirmed [REDACTED] underwent surgery in 1999 and the two work status reports indicate he was placed on a modified work schedule from May 9, 2002 until May 15, 2002 for a joint strain which was cleared on June 12, 2002. [REDACTED] letter state [REDACTED] is currently under treatment for depression . . . also

showing signs of dementia manifested by becoming forgetful about recent events, losing and misplacing valuable objects, and concentration becoming difficult . . . his condition is becoming worse with increasing loss that the family members have to give him help and assistance at home . . . it is felt that with his worsening condition, he needs a person to help him with his daily activities.” The medical letter lacks detail in regard to the affiant’s familiarity with [REDACTED] the length of time he has been diagnosed with such illnesses, under what kind of treatment he has been placed and there are no other medical documents to suggest that [REDACTED] suffers from any physical or mental illnesses. Additionally, as discussed above, there is no evidence in the record to suggest that [REDACTED] is unable to provide assistance to [REDACTED] and the record indicates that they have family members in the area, such as their two other grown children, who may be able to provide them with emotional and financial assistance in the absence of the applicant.

In their affidavits, [REDACTED] and [REDACTED] do not contend that they would suffer hardship if they were to return to the Philippines with the applicant. The AAO is, therefore, unable to find that [REDACTED] and [REDACTED] would experience hardship should they choose to join the applicant in the Philippines. Additionally, the AAO notes that, as U.S. citizens, the applicant’s mother and father are not required to reside outside of the United States as a result of denial of the applicant’s waiver request.

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 mother and father would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] and [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 parents 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.