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**U.S. Citizenship
and Immigration
Services**

H2

[REDACTED]

FILE:

Office: MANILA, PHILIPPINES

Date: NOV 01 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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Manila, Philippines 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 November 21, 2003. The applicant is engaged to a lawful permanent resident and is the beneficiary of an approved Alien Fiancée Petition. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that a review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to emigrate to the United States. The application was denied accordingly. *Decision of the Acting Officer in Charge*, dated March 4, 2005.

On appeal, counsel states that the applicant's spouse was never afforded the opportunity to present his case and was denied his due process rights under the law. He states that the Acting Officer in Charge erroneously rejected the submission of the applicant's spouse's supporting documents and based his decision solely on the supplemental questionnaire completed by the applicant at the consular office. *Form I-290B*, dated April 1, 2005.

The AAO notes that Constitutional issues are not within the appellate jurisdiction of the AAO, therefore counsel's assertions regarding the denial of the applicant's due process rights will not be addressed in the present decision. In addition, the AAO notes that the supporting documentation that counsel refers to could have been submitted on appeal, but were not. The only supporting document in the record is a statement from the applicant's spouse dated November 15, 2004. The entire record will be considered in reviewing the district director's decision.

The record indicates that on November 21, 2003 the applicant presented fraudulent documents when applying for a nonimmigrant visa.

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.

A 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 due to separation or her children experience 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 AAO notes that the applicant and her spouse were previously married, then divorced and are now engaged. The applicant and her spouse had been separated for years while the applicant's spouse petitioned for their four daughters to relocate to the United States.

The spouse states in his statement that he will suffer extreme hardship as a result of the applicant's inadmissibility. *Spouse's Statement*, dated November 15, 2004. The applicant's spouse states that he will suffer emotional hardship because after years of being apart he has decided that he wants to spend his life with the applicant. The applicant's spouse states that he is a single father and is depressed, stressed and frustrated. He feels that he is an inadequate father and his daughters being without their mother has had a detrimental effect. He claims that his eldest daughter, who is 18 years old, had a child out of wedlock. He states that this incident has brought the family together. He states that he suffers financially and as a bartender does not make enough money to support his family. The applicant's spouse also states that two of his daughters are in special education classes and have poor grades. No documentation was submitted to support these claims. The AAO notes that the applicant states financial documents were submitted, but the record does not contain these documents.

In establishing extreme hardship the applicant's spouse places special emphasis on his eldest daughter and her special needs due to having a child out of wedlock. The applicant's daughter is an adult and the record does not indicate that she cannot support herself and her son. The AAO cannot take the assertions of the applicant's spouse as fact. The applicant must submit documentation to support her claims and in the current application she has not done so. Therefore, the AAO finds that she has not established that her spouse will suffer extreme hardship as a result of the her inadmissibility.

Furthermore, the AAO notes that the issue of whether the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines was not addressed.

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). 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 (9th 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(i) 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.