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

H2

FILE: [REDACTED] Office: NEWARK

Date: OCT 06 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:

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, Newark, New Jersey, 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 U.S. citizen. 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 1, 2005.

The record reflects that, on April 18, 1996, the applicant obtained admission to the United States by presenting a fraudulent Philippine passport and U.S. nonimmigrant visa under the name [REDACTED]

On June 11, 1999, the applicant married his U.S. citizen spouse, [REDACTED] (Ms. [REDACTED]). On December 19, 2003, 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 21, 2004, the applicant appeared at Citizenship and Immigration Services' (CIS) Newark District Office. The applicant admitted to procuring admission to the United States by fraud in 1996. On December 23, 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's denial of the waiver application is tantamount to abuse of discretion and that she erred in not considering the applicant's children's inability to master a foreign language, the psychological factors, the applicant's role as primary provider and non-economic hardships resulting from removal in determining whether the applicant had established that a qualifying family member would suffer extreme hardship. *See Applicant's Brief*, dated June 15, 2005. In support of his contentions, counsel submitted a brief and country condition reports. The entire record was reviewed 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.

The district director based the applicant's finding of inadmissibility on the applicant's admitted procurement of admission by fraud in 1996. Counsel does not contest the district director's determination of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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 record reflects that Ms. [REDACTED] is a native of the Philippines who became a lawful permanent resident in 1995 and a U.S. citizen in 2002. The applicant has a six-year old son and a four-year old son who are both U.S. citizens by birth. The record further reflects that the applicant and Ms. [REDACTED] are in their 30's and there is no indication that Ms. [REDACTED] or the applicant's children have any health concerns.

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 sons will not be considered in this decision, except as it may affect their mother, 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).

Counsel asserts that Ms. [REDACTED] would suffer extreme hardship if she were to remain in the United States without the applicant because the applicant is the main provider, her sole income is not sufficient to support her and her children and she needs the applicant's help with her and her children's daily needs.

Financial records indicate that Ms. [REDACTED] earns approximately \$59,885 per year as a registered nurse and that in 2003, the applicant and Ms. [REDACTED] total income was \$77,767. As such, the record does not reflect that the applicant is the main provider for the family. The record shows that, even without assistance from the applicant, Ms. [REDACTED] earns sufficient income to more than exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. The record does not support a finding of financial loss that would result in an extreme hardship to her if she had to support herself and the children without the additional income provided by the applicant. While it is unfortunate that Ms. [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, and her children would essentially be raised in a single-parent household, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Counsel and Ms. [REDACTED] do not assert, and there is no evidence in the record to suggest, that Ms. [REDACTED] or her children suffer from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

Counsel contends that Ms. [REDACTED] would suffer extreme hardship if she were to return to the Philippines with the applicant. However, Counsel then asserts that Ms. [REDACTED] and the children would be unable to accompany the applicant to the Philippines. Moreover, in her affidavit, Ms. [REDACTED] does not indicate that she would return to the Philippines with the applicant or that she would suffer hardship if she returned to the Philippines with the applicant. In fact, Ms. [REDACTED] states, "I cannot return to a country that my children do not know." The statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980). The AAO is, therefore, unable to find that Ms. [REDACTED] would experience hardship should she choose to join her husband in the Philippines. Additionally, the AAO notes that, even if counsel had established Ms. [REDACTED] would suffer extreme hardship by accompanying the applicant to the Philippines, as U.S. citizens, 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, Ms. [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 Ms. [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 (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 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.