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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.

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 is 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 entering the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the stepmother of four children, of whom three are U.S. citizens and the fourth is a lawful permanent resident. 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 stepchildren.

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 August 8, 2005.

The record reflects that, on January 27, 2003, the applicant married her spouse, [REDACTED]. On May 6, 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 [REDACTED]. The applicant submitted evidence that, on October 29, 1993, she entered the United States by presenting a photo-substituted passport containing an I-551 Lawful Permanent Resident stamp under the name "[REDACTED]". On May 6, 2003, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver request would result in extreme hardship to her family members.

On appeal, counsel contends that the district director erroneously denied the application because the district director failed to consider all of the circumstances establishing that the applicant's spouse would suffer extreme hardship, as well as the cumulative effect of these circumstances. *See Counsel's Brief*, dated October 4, 2005. In support of his contentions, counsel submits only the referenced brief. 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.

....

- (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 record reflecting the applicant's entry into the United States by fraud in 1993. On appeal, counsel 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. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's spouse's U.S. citizen children 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, 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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence.

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 [REDACTED] is a native of the Philippines who became a lawful permanent resident in 1978 and a naturalized U.S. citizen in 2003. The applicant and [REDACTED] do not have any children together. [REDACTED] has a 37-year old daughter and a 32-year old son from his previous marriage who are both natives of the Philippines who became lawful permanent residents in 1988 and naturalized U.S. citizens in 1994. [REDACTED]

has a 30-year old son from his previous marriage who is a native and citizen of the Philippines who became a lawful permanent resident in 1988. also has a 19-year old son from his previous marriage who is a U.S. citizen by birth. The record reflects that the applicant is in her 40's and is in his 60's. There is no evidence in the record that has any health concerns.

Counsel contends that the emotional distress of the separation from a family member must be an important consideration in the assessment of hardship. 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 removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute "extreme hardship."

Counsel asserts that will suffer extreme emotional, physical and financial hardship that would extend beyond "mere separation" or "financial difficulties" if he remained in the United States without the applicant. Counsel asserts that depends on the applicant for emotional support, especially since she was a tremendous comfort to him when his first wife was ill and eventually passed away. Counsel asserts that the applicant, as the sister of previous spouse, helped him through this difficult time and became close to him after his wife passed away. Counsel asserts that has already suffered through the death of one spouse and that to separate him from the individual who helped him through this difficult time would be an extreme emotional hardship to him. Counsel asserts that may become severely depressed and overwhelmed by the thought of daily life without the applicant's love, help and support. in his affidavit, states that the applicant helps him through his daily life and he needs her by his side as a friend and a partner. He states that he needs the applicant to care for their household because it would be an extreme hardship for him to work and care for the family by himself, especially since he owns his house. He states that both he and the applicant contribute financially to the household. states he would be devastated by his separation from the applicant because he has already suffered the loss of one partner and cannot imagine having to go through it again.

Financial records indicate that, in 2004, earned approximately \$29,280 and, in 2005, his yearly salary was approximately \$30,420. Additionally, the record reflects that has family members in the United States, such as his adult children, who may be able to assist him physically and financially in the absence of the applicant. The record shows that, even without assistance from the applicant or other family members, 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 the AAO acknowledges that may have to lower his standard of living, the record does not support a finding of financial loss

that would result in an extreme hardship to [REDACTED] if he had to support himself without additional income from the applicant, even when combined with the emotional hardship described below.

While counsel and [REDACTED] assert that separation from the applicant in [REDACTED] case is beyond what would normally be expected when an alien spouse is removed to a foreign country due to the death of his previous spouse and the applicant's emotional support of [REDACTED] through his previous spouse's illness and death, the record does not establish that [REDACTED] has any ongoing emotional health issues or that he has ever sought medical or psychological assistance for any emotional problems stemming from the end of his first marriage. Accordingly, there is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. While it is unfortunate that [REDACTED] would experience distress and some level of depression as a result of his separation from the applicant, such emotions are commonly felt by aliens and families upon removal. Finally, the record indicates that [REDACTED] has family members, such as his adult children, in the United States who may be able to assist him physically and emotionally in the absence of the applicant.

Counsel asserts that [REDACTED] would suffer extreme hardship if he were to accompany the applicant to the Philippines because he is completely assimilated to American life and culture. Counsel asserts that the district director failed to recognize that [REDACTED] has resided in the United States since 1978 and has not even been back to the Philippines since 1997. Counsel asserts that it would be a financial hardship to [REDACTED] if he returned to the Philippines because it would be hard for him to find a new job in the Philippines due to his age and the fact that there is much discrimination against the elderly. Counsel asserts that it would be unlikely that [REDACTED] would find a comparable position in the Philippines to what he has in the United States, it would be hard for him to support himself and the applicant, and he would be giving up health benefits and a secure income in the United States. Counsel asserts that the loss of [REDACTED]'s income would be more than a mere "inability to maintain one's present standard of living." Counsel asserts that [REDACTED] has built a life in the United States as a valuable member of society and he would experience extreme hardship if he were separated from that life. [REDACTED] in his affidavit, states that it would be a great hardship for him to join the applicant in the Philippines because all of his children and grandchildren reside in the United States and he no longer has family in the Philippines. He states he has not been to the Philippines since 1997 and it would be a great hardship for him to uproot his life and try to find a new job in the Philippines since he is in his 60's and there is discrimination against the elderly in the Filipino job market.

Having analyzed the hardships counsel and [REDACTED] claim [REDACTED] will suffer if he were to accompany the applicant to the Philippines, the AAO finds that they do not constitute extreme hardship. Counsel asserts that [REDACTED] would not be able to find employment in the Philippines that was comparable to his employment in the United States. There is no evidence in the record to confirm that [REDACTED] and the applicant would be unable to obtain *any* employment in the Philippines and economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. As discussed above, there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental condition that could not be treated in the Philippines. While the hardships that would be faced by [REDACTED] with regard to relocating to the Philippines--readjusting to the Filipino culture, economy and environment; separation from friends and family; a potentially reduced quality of health care; and lack of health benefits and a secure income comparable to that available in the United States--are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Finally, as previously noted, the applicant's spouse is not required to reside outside of the United States as a

result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

Counsel contends that to force [REDACTED] to choose between the applicant and the life he has built for himself in the United States is a hardship in and of itself and that it is not a "personal decision" that [REDACTED] can make lightly. Counsel asserts that [REDACTED]'s decision, to remain in the United States without the applicant, or to join the applicant in the Philippines, would result in extreme hardship and, thus, [REDACTED] has no real "choice," despite the district director's suggestion to the contrary. The AAO notes that, in her decision, the district director made no reference as to whether [REDACTED]'s decision was one of "personal choice." Additionally, as discussed above, the AAO has found that [REDACTED] would not suffer extreme hardship whether he remained in the United States without the applicant or accompanied the applicant to the Philippines and the act of making a choice between his life in the United States or joining the applicant in the Philippines is not beyond the hardships normally faced by aliens and families upon removal.

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 [REDACTED] will face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise 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 has 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.