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U.S. Citizenship  
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[Redacted]

APR 17 2007

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, 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 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 in April 1999. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that her removal, would result in extreme hardship to her husband. The application was denied accordingly. *Decision of the District Director*, dated June 18, 2004.

On appeal, counsel asserts that the hardship factors in the applicant's case, taken in the aggregate meet the standard for extreme hardship and that the applicant has demonstrated that she merits the favorable exercise of the Service's discretion. *Counsel's Brief*, not dated.

The record indicates that in April 1999, the applicant presented a Filipino passport and B-2 Visitor's Visa in the name of "Nila Galbanog" to gain entry into the United States.

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.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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). In addition, the Ninth Circuit Court of Appeals has 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. 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 first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in the Philippines. The applicant’s spouse states in his declaration, dated July 7, 2004, that relocating to the Philippines would be extremely hard for him. He states that he has lived in the United States his entire life and he does not speak the Filipino language. The applicant’s spouse also states that he is concerned about finding a source of income in the Philippines. He feels that job opportunities in the Philippines are scarce and that if he is able to find employment in his field, his pay would be meager. The record indicates that the applicant’s spouse is a Fabrication Operator in the Laser Department of Hoya Corporation, Optics Division. The applicant’s spouse further states that it would break his heart to imagine his child living in the Philippines and being subject to hardships unknown to children in the United States. In support of her husband’s employment concerns the applicant submitted labor force statistics from the Bureau of Labor and Employment Statistics in Manila, Philippines, dated March 2004; wage information from the

National Wages and Productivity Commission, for selected cities and provinces in the Philippines. He also provides two newspaper articles regarding security concerns in the Philippines. Beyond the claims made by the applicant's spouse in his statement, counsel, on appeal, asserts that the applicant would experience hardship if he relocated to the Philippines because the lack of close family and cultural ties in the Philippines would make living there a terrible ordeal, because of the prohibitively high cost of living in the Philippines because of the emotional trauma he would experience as a result of his responsibility for raising a child in a country as insecure as the Philippines. The record includes labor force statistics that show that the unemployment rate in the Philippines is 11 percent. But the same statistics also show that employment expanded by 4.7 percent during the year and much of that growth was attributed to the recovery of the industry sector, the sector where the applicant's spouse would be employed. The AAO cannot take the assertions of the applicant's spouse as fact. The applicant must submit documentation to support his claims. The wage information submitted by the applicant shows that employees in manufacturing earn a minimum wage of P213 daily in the Philippines. The AAO notes that this source shows the minimum wage, not the wage that a person of the applicant's experience and background would be likely to make in his field. In addition, there is no information in the record to show what the applicant's family's living expenses would be like in the Philippines. With regard to the security situation in the Philippines, the first newspaper article states that communist fighters seized 56 firearms and police officers were killed as a result. The second article states that 100 lumber firm workers were held hostage in the region of Apayo. Both incidents occurred in July 2004. While these articles do establish that there is violence in the Philippines, they do not demonstrate that the applicant's spouse would be a target of such violence. Accordingly, the documentation submitted by the applicant does not establish that her husband would be unable to find employment if he were to move with her to the Philippines. Neither has she established that he would be at risk as a result of the ongoing political instability and criminal activities described in the submitted news articles. The AAO notes that no evidence has been submitted in support of the additional hardships that counsel claims the applicant's spouse would face in the Philippines. Thus, the applicant has not shown that her spouse would suffer hardship, above and beyond what would normally be expected upon relocation.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. In his declaration, the applicant's spouse states that if he is separated from his wife he will suffer extreme emotional hardship. He states that he cares deeply for the applicant and will feel lost without her constant love and support. He also explains that his wife is expecting a child and that he will be constantly worrying about the well being and safety of his child if his wife and child are forced to go to the Philippines. In support of the applicant's spouse's emotional suffering, the applicant submitted a letter from [REDACTED], dated July 7, 2004. [REDACTED] states that after the applicant received her denial letter, her and her spouse have been anxious with sleep disturbance and impaired concentration. He states that the financial and emotional hardship to the applicant's family as a result of the applicant's inadmissibility would be substantial. The AAO notes that the letter from [REDACTED] does not include an office address or any evidence regarding the nature of his medical practice. The letter does not describe when he evaluated the applicant and/or her spouse or over what period of time. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the symptoms suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted letter do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED]'s findings speculative and diminishing the letter's value in determining extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from

the applicant. However, the record does not establish that his situation is different from that of other individuals separated as a result of removal.

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 an 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.