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U.S. Citizenship
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Services

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[REDACTED]

H-2

FILE:

Office: LOS ANGELES, CA

Date: FEB 02 2007

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, Los Angeles, 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated October 13, 2004.* The AAO notes that the District Director erred in finding the applicant to be eligible for a section 212(h) waiver, as the applicant does not have a criminal history. As previously noted, the applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit from the applicant's spouse; letters written by [REDACTED], dated May 29, 2001 and November 8, 2004; a letter written by [REDACTED], Family Care Specialists, dated March 21, 2001; employment letters for the applicant and her spouse; country condition reports; a letter of support from [REDACTED], Pastor, Saint Dominic Church & Priory, dated April 18, 2001; and tax statements for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant admitted in her adjustment of status interview to procuring admission into the United States by fraud or willful misrepresentation of a material fact. *Form I-485*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or 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.

If the applicant's spouse travels with the applicant to the Philippines, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse has lived in the United States since 1985. *Affidavit of the applicant's spouse*. All of his immediate family members live in the United States, including his parents and siblings. *Id.* He has no family in the Philippines. *Id.* The applicant's spouse stated that his father is in poor health, and that he assists his father in running errands and taking him to his medical appointments. *Id.*; *See also letter written by [REDACTED] Family Care Specialists, dated March 21, 2001*. The applicant's spouse's father has a prior history of heart problems, with his aortic valve replaced in 1995 and a cardio-defibrillator implanted in 1998. *Letter written by [REDACTED] Family Care Specialists, dated March 21, 2001*. While the AAO acknowledges the applicant's spouse's father's health condition, it notes that the record fails to address why the applicant's spouse's siblings as well as other family members would be unable to help in these care-taking responsibilities. The applicant's spouse stated he would suffer great economic hardship if he were forced to leave the United States and return to the Philippines with the applicant. *Affidavit of the applicant's spouse*. He has been employed with the same company in the United States for several years, and if he had to return to the Philippines, not only would he leave behind his steady job, but he would return to a country where there are poor economic conditions. *Id.*; *employment letter for the applicant's spouse; country condition report*. While the AAO acknowledges the

applicant's spouse's statements, the AAO does not find that the record demonstrates that the applicant's spouse would be unable to sustain himself and contribute to his family's financial well-being in the Philippines or that the applicant could not also contribute to the family's finances from a location other than the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse stated that the emotional loss that he would endure from being separated from the applicant whom he loves so much would be incomprehensible. *Affidavit of the applicant's spouse*. The thought of being away from the applicant for any period of time would cause the applicant's spouse an incredible amount of stress. *Id.* He would be very depressed if he could not live with the applicant in the United States. *Id.* The applicant's spouse experiences profound anxiety about the possibility of being separated from his spouse. *Letter written by [REDACTED], dated May 29, 2001*. There is a strong likelihood that the applicant's spouse is experiencing post-traumatic stress and that he is suffering severe emotional distress. *Id.* In November 2004, the applicant's spouse met for a second consultation with his licensed clinical social worker. During that visit, she assessed that the applicant's spouse's feelings of stress and fear have led to constant depression and anxiety. *Letter written by [REDACTED], dated November 8, 2004*. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letters are based on two interviews occurring three years apart. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on two interviews several years apart, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in 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(a)(6)(C) 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.