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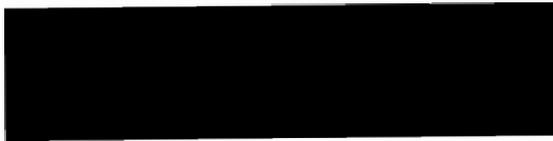
U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000,
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: LOS ANGELES Date: JAN 10 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:



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, 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 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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.

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 April 18, 2005.

The record reflects that, on May 16, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. On October 31, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California, District Office. The applicant testified that, in 1993, she procured admission to the United States by presenting a passport that belonged to another person.

On April 14, 2003, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship because he is clinically depressed and has previously attempted to commit suicide. *See Applicant's Brief*, dated May 9, 2005. In support of his contentions, counsel submitted the referenced brief, a psychological report, affidavits from the applicant's spouse's sisters, financial documentation and copies of documentation previously provided. 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 applicant's admission to obtaining entry into the United States by fraud in 1993. On appeal, counsel does not contest the district director's determination of inadmissibility.

Counsel notes that the district director cited to and compared the applicant's case to cases involving other statutes under the Immigration and Nationality Act, specifically cases those involving inadmissibility based on criminal convictions. However, while the cases the district director cites involve other sections of the Act, the district director correctly cites these precedents, because they set forth factors and findings in regard to "extreme hardship." These precedents offer insight into what type or combination of hardships would constitute extreme hardship to the applicant's spouse.

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.

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).

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, on March 14, 2002, the applicant married her spouse, [REDACTED] (Mr. [REDACTED]). Mr. [REDACTED] is a U.S. citizen by birth. The applicant and Mr. [REDACTED] have no children. The record reflects further that the applicant and Mr. [REDACTED] are in their 30's, and Mr. [REDACTED] may have some health concerns.

Counsel contends that Mr. [REDACTED] will suffer extreme hardship if he were to remain in the United States without the applicant because they have purchased a house together and that the removal of the applicant may lead to an attempt of suicide because Mr. [REDACTED] is currently clinically depressed and has a history of overindulgence in alcohol and two past suicide attempts. Mr. [REDACTED] in his affidavit, asserts that he could not imagine his life without the applicant, the thought of them being separated upsets him greatly, and the only reason they can afford their house is with their joint income. A psychological report diagnoses Mr. [REDACTED] with major depression, single episode severe and separation anxiety disorder. The psychological report states that, prior to marrying the applicant, Mr. [REDACTED] life was one of overindulgence with alcohol, feelings of discontent, depressive thoughts, erratic and unstable behaviors, low self esteem, mental depression and suicidal ideation culminating in two suicidal attempts, which has completely changed with his marriage to the applicant. The psychological report further states that, since the realized threat of the applicant's removal Mr. [REDACTED] has been experiencing the impact of emotional trauma and is suffering intense psychological distress combined with high levels of anxiety which will continue until his wife's removal is no longer an issue. Letters from Mr. [REDACTED] sisters state that he has attempted suicide in the past and they believe he will attempt to commit suicide again if the applicant is removed from the United States.

Financial records indicate that, in 2001, Mr. [REDACTED] earned approximately \$72,127. The record reflects that Mr. [REDACTED] has family members in the United States, such as his parents and siblings, 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, Mr. [REDACTED] in the past, has earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While Mr. [REDACTED] may have to lower his standard of living and may be unable to keep the house in which he currently resides, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Mr. [REDACTED] if he had to support himself without additional income from the applicant, even when combined with the emotional hardship described below.

The record does not contain evidence that Mr. [REDACTED] has received psychological treatment or evaluation other than during the appointment used to write the psychological report. Therefore, the psychological report may be given little weight. Additionally, the AAO notes that the psychological report was conducted after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit, which the applicant submitted with the Form I-601. While the psychological report diagnoses Mr. [REDACTED] with major depression and separation anxiety disorder and recommends continued treatment, there is no evidence in the record to indicate that Mr. [REDACTED] continues to require or receive treatment for these diagnoses. The psychological report indicates that Mr. [REDACTED] has a history of suicidal behavior, which may be triggered again by the removal of the applicant. However, besides the psychological report and affidavits from Mr. [REDACTED] sisters, there is no other evidence in the record to confirm that Mr. [REDACTED] has ever attempted suicide or has been diagnosed with depression or received treatment for any psychological consequences of such a background. There is no evidence in the record, besides the psychological report and Mr. [REDACTED] sisters' affidavits, that Mr. [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship

beyond that commonly suffered by aliens and families upon deportation. Additionally, the record reflects that Mr. [REDACTED] has family members, such as his parents and siblings, in the United States who may be able to assist him physically and emotionally in the absence of the applicant.

Counsel asserts that Mr. [REDACTED] would suffer extreme hardship if he accompanied the applicant to the Philippines because Mr. [REDACTED] has no ties to the Philippines, he would be financially impacted by relocating to the Philippines, he does not speak Tagalog, he has a history of mental problems and his family members are in the United States. Mr. [REDACTED] in his affidavit, states that he could not go the Philippines with the applicant because he has so many responsibilities in the United States, it would be difficult for him to not have his parents close to him, he would not be able to find a comparable job in the Philippines, he does not speak Tagalog, and he would be unable to pursue his future goals in the Philippines.

Having analyzed the hardships Mr. [REDACTED] and his counsel claim he will suffer if he were to accompany the applicant to the Philippines, the AAO finds that they do not constitute extreme hardship. Mr. [REDACTED] asserts that he does not speak the local language. However, according to country conditions reports, English is the language of government, professionals, academics and instruction in education. *Department of State Country Background Notes, The Philippines*, www.state.gov/r/pa/ei/bgn/2794.htm. Mr. [REDACTED] asserts that he would not be able to find employment in the Philippines that was comparable to the employment he has in the United States. 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). Counsel asserts that Mr. [REDACTED] suffers from mental problems. However, as discussed above, there is no evidence in the record to indicate that Mr. [REDACTED] suffers from a physical or mental condition that could not be treated in the Philippines. Finally, Mr. [REDACTED] asserts that he would suffer emotional hardship if he were to accompany the applicant to the Philippines because his family members are in the United States. While the hardships faced by Mr. [REDACTED] with regard to adjusting to a new culture, economy, environment, separation from friends and family and an inability to pursue his future goals are unfortunate, they are what would normally be expected by any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as a U.S. citizen, 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, Mr. [REDACTED] would not experience extreme hardship if he 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 Mr. [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 (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 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 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.