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FILE:

Office: LOS ANGELES, CALIFORNIA

Date: **MAY 30 2007**

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 waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport and visa under a different name. The record indicates that the applicant's spouse is a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife and two United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's United States citizen spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated September 28, 2005.

On appeal, the applicant, through counsel, contends that the District Director "erred in determining that the applicant had not demonstrated that his inadmissibility to the United States would result in extreme hardship to his U.S. citizen spouse." *Attachment to Form I-290B*, filed November 2, 2005.

The record includes, but is not limited to, counsel's **brief and supplemental** brief, an affidavit from the applicant's wife, a psychological evaluation by Dr. [REDACTED] various medical reports for the applicant's wife, a court disposition for the applicant's **criminal convictions**, and numerous letters of references from the applicant's family and friends. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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, in pertinent part, that:

- (i) (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 immigrant 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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C)(i) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's wife.

In the present application, the record indicates that on June 28, 1996, the applicant entered the United States on a B1/B2 nonimmigrant visa and a passport under the name of "[REDACTED]". On November 24, 1996, the applicant married Ms. [REDACTED] a lawful permanent resident, in Las Vegas, Nevada. On January 15, 1997, the applicant filed a Form I-130, which was approved on March 7, 1997. On August 17, 1997, the applicant and his wife had their daughter, Louise. On May 26, 1999, the applicant and his wife had their second daughter, [REDACTED]. On December 22, 2001, the applicant was arrested in the County of Los Angeles for possession of a narcotic controlled substance, driving while under the influence of alcohol/drugs, and driving under the influence of .08% alcohol. On January 18, 2002, the applicant's wife became a naturalized United States citizen. On September 27, 2002, the applicant was convicted of reckless driving, and was placed on 24 months probation. On March 18, 2003, the Superior Court judge terminated the applicant's deferred entry of judgment and dismissed the possession of a narcotic controlled substance charge. On June 11, 2003, the applicant filed a Form I-601 and an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 28, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

Counsel contends that if the applicant were removed from the United States, his United States spouse would face extreme hardship. The applicant's wife states that if the applicant "were not permitted to remain in the United States, the results would be extremely hard emotionally and physically on [her] family and [herself]." *Declaration of* [REDACTED], page 2, dated August 4, 2004. The applicant's wife states that she "identi[fi]es America as [her] new home and [has] fully assimilated into this culture," and all of her family resides in the United States. *Id.* at 2-3. The AAO notes that the applicant's wife arrived in the United States in 1996, and is a native of the Philippines, who spent all of her formative years in the Philippines. The applicant's wife states her children have all their friends and family in the United States and they do not speak the local language in the Philippines. *Id.* at 6. The AAO notes that it has not been established that the applicant's children, who are 7 and 9 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of the Philippines. Dr. [REDACTED] states the applicant's children suffer from various health problems; however, the AAO notes that the applicant failed to provide any evidence demonstrating that his children could not receive medical treatment for their medical problems in the Philippines. See *Psychological Evaluation by* [REDACTED] Ph.D., page 11, dated December 12, 2005. The applicant's wife states she suffers from "allergic rhinitis, lower back pain, hypertension, and severe depression." *Id.* at 6; see also *Letter from* [REDACTED] M.D., dated July 8, 2004. Counsel states the applicant's wife "is susceptible to develop schizophrenia like her late father." *Brief*, page 4, filed November 23, 2005. Dr. [REDACTED] diagnosed the applicant's wife with major depression. *Psychological Evaluation by* [REDACTED] Ph.D., page 22, *supra*. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on a single interview between the applicant's spouse and the psychologist. The applicant's wife states she "underwent a psychological evaluation by Dr. [REDACTED] for [her] depression;" however, there was no evidence submitted establishing this ongoing relationship between Dr. Friedman and the applicant's spouse. See *Declaration of* [REDACTED] page 7, *supra*. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, 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. Counsel states "[d]espite her health battles, [the applicant's wife] is a hard working mother of two, holding two jobs as a nurse at [REDACTED] Hospital in Mission Hills, California and [REDACTED] hospital in Hollywood, California...Within this short time span, she became an American citizen; maintained her hospital positions as a registered nurse; gave birth to her daughters Louise and Justine; volunteered at her local church; bought a new home in Castaic, California;...and take[s] care of her elderly mother." *Brief*, page 4-5, *supra*. The AAO notes that it has not been established that the applicant's wife's current medical and psychological conditions are so extreme that she cannot take care of herself or her children. The applicant's wife states she helps care for her "sick mother...She has diabetes, hypertension, neuropathy (numbness), recurrent pneumonia, carpal tunnel syndrome, and heal splits that make walking very difficult." *Id.* at 7. The AAO notes that the applicant's wife admitted to Dr. [REDACTED] that her mother resides with her boyfriend; therefore, the applicant's mother would not be left without any help if the applicant's wife joined her husband in the Philippines. See *Psychological Evaluation by* [REDACTED] Ph.D., page 9, *supra*. The applicant's wife states that she "would not be covered by any health insurance" in the Philippines. *Declaration of* [REDACTED] page 7, *supra*. However, the AAO notes that the applicant is a trained nurse and it has not been demonstrated that she could not obtain a similar position in the Philippines, which would allow for her to afford health

insurance. Additionally, the applicant has not established that his wife could not receive medical and/or psychological treatment for her problems in the Philippines. The AAO finds that the applicant failed to establish extreme hardship to his spouse if she accompanies him to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's United States citizen spouse if she remains in the United States, with access to adequate health care and in close proximity to her family. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states that she makes most of the money in the house, but she depends on the applicant's financial contributions to make ends meet. *Declaration of [REDACTED]*, page 5-6, *supra*. However, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

Although the AAO is not insensitive to the applicant's situation, the emotional hardship of separation is a common result of separation and does not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation if she 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.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(2)(A) 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.