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FILE:

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Office: SACRAMENTO, CA

Date: **JUL 09 2008**

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Sacramento, 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 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 procuring admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a 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 his spouse.

The field office 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 Field Office Director*, dated September 14, 2007.

On appeal, counsel asserts that the field office director did not give adequate weight to the hardship that the applicant's spouse would suffer if the applicant was not allowed to remain in the United States. *Form I-290B*, received October 12, 2007.

The record includes, but is not limited to, counsel's brief and statements from the applicant, the applicant's spouse and the applicant's friends. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant willfully misrepresented himself when applying for admission to the United States with a C-1 visa on April 25, 1993.¹ The applicant stated to the inspecting officer that he was in transit to a ship in Panama, although he knew that no vessel was awaiting his arrival and he intended to remain in the United States permanently. As a result of this prior misrepresentation, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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

¹ The AAO notes that unless the applicant is eligible to adjust his status under section 245(i) of the Act, section 245(c)(3) of the Act would render him ineligible to adjust his status pursuant to section 245(a) of the Act as he was admitted to the United States in C-1 status.

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.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. The AAO notes that hardship to non-qualifying relatives is not a permissible consideration except to the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) 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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to the Philippines or in the event that she remains in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to the Philippines. Counsel asserts that most of the applicant's spouse's family members reside in the United States (including her daughter), she relies on her family and friends for emotional support, she would likely be unable to maintain a meaningful relationship with her family due to the costs of travel and telephone calls, she must remain in the United States to maintain a relationship with her daughter and it would be impossible for her to find employment. *Brief in Support of Appeal*, at 2-3, dated October 10, 2007. The applicant's spouse states that her children would be deprived of educational and employment opportunities. *Applicant's Spouse's Statement*, at 2-3, undated. However, the record does not include evidence to establish that the applicant's spouse would suffer hardship as a result of her children's lost opportunities upon relocation. Moreover, it fails to include any documentation regarding conditions in the Philippines to support her claims that relocation would deprive her children of educational and employment opportunities or that she would be unable to obtain employment. Neither does the record demonstrate that most of the applicant's spouse's family members reside in the United States. Nor does it include sufficient evidence of any other forms of hardship. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). After a thorough review of the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse relocates to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel asserts that the applicant's spouse is experiencing a great deal of stress and pain at the thought of being separated from the applicant, the BIA has recognized that family unification is one of the central purposes of the I-601 waiver, the thought of living in the United States with very little support has caused the applicant's spouse to become very depressed, her friends can attest to the increased stress and weight loss she has suffered during this period, her daughter is close to the applicant and she would face additional stress from worrying about the impact of the applicant's removal on her daughter. *Brief in Support of Appeal*, at 2-3. The applicant's spouse states that her first husband was verbally abusive and an extreme alcoholic, she was heartbroken from her divorce and she was very hesitant to enter into another permanent relationship for fear of another separation. *Applicant's Spouse's Statement*, at 1. She states that she was suffering from depression and the applicant cared for and supported her. *Id.* at 2.

The applicant's spouse states that she does not earn enough to pay for the household expenses, the majority of the household income is from the applicant, they support her two children, she is scheduled to be laid off, she will be limited in her ability to see the applicant due to geographic distance and her employment, and she recently lost a brother and sister to cancer and will suffer more if she loses the applicant. *Id.* at 2-3. The applicant's spouse's friends state that she has lost weight, her appetite and her jolly personality, and that she has been having sleepless nights, and dealing with fear and emotional burdens. *Letters from [REDACTED] and [REDACTED]*, dated October 10, 2007. However, the record does not include substantiating evidence of the claims presented. *See Matter of Soffici, supra*. The record reflects that the applicant's spouse would encounter difficulties without the applicant, however, the record does not include sufficient evidence to establish that these difficulties would constitute extreme hardship in the event that she remains in the United States.

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 notes that 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 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.