



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: **JUN 17 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 PETITIONER:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the wife of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated December 5, 2005.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in concluding that the applicant's husband would not suffer extreme hardship if the applicant were removed from the United States. Specifically, counsel states that the applicant's husband has coronary heart disease and the applicant "should be given a chance to spend the rest of her life with her husband." *Brief in Support of Appeal* at 2. Counsel further states that the applicant's husband is also suffering from vascular disease that affects his lower extremities and that both the applicant and her husband would suffer a great deal if they were separated. *Id.*

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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (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. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a fifty-five year-old native and citizen of the Philippines who entered the United States in October 1993 with a fraudulent Philippines passport and U.S. visa. The record further reflects that the applicant's husband is an eighty-one year-old native and citizen of the United States whom the applicant married on May 1, 2002. The applicant and her husband reside in Baldwin Park, California.

Counsel asserts that if the applicant is removed from the United States, she and her spouse will suffer from being separated from each other, and the applicant's husband would suffer extreme hardship due to his medical condition. In support of these assertions, counsel submitted with the waiver application a letter from the applicant's husband's doctor stating that he suffers from peripheral vascular disease affecting both lower extremities. The letter states,

He is unable to walk a short distance without having to stop and rest to alleviate the pain. Mr. [REDACTED] needs assistance with activities of daily living, as shopping and cleaning. He . . . may need vascular surgery in the future. Letter from [REDACTED] dated March 31, 2003.

Counsel also submitted an affidavit from the applicant's husband stating that he is very dependent on the applicant, especially as his health has been failing. He further states, "She encourages me to regain my strength by walking, exercising and by doing a lot of things together such as boating and fishing." See affidavit from [REDACTED] dated May 6, 2003. He states that the applicant takes care of him "emotionally, physically and spiritually" and that the loss of his wife would be unbearable. The record also contains letters

from friends and from the applicant's church, certificates of title for cars and other vehicles owned by the applicant and her husband, bank statements, tax returns, and photographs of the applicant and her husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's husband's condition is so serious that he would suffer extreme hardship if the applicant were removed from the United States. The letter from his doctor states that he needs assistance with activities like shopping and cleaning, but provides no further detail concerning the seriousness of the condition or the type of assistance the applicant's husband needs. Further, the applicant's husband states that the applicant encourages him to exercise and go boating and fishing, and photographs submitted with the waiver application show them pursuing these activities. It appears that the applicant's husband is still active and the evidence on the record does not establish that he is unable to care for himself or that separation from the applicant would cause extreme physical hardship.

In his affidavit the applicant's husband states, "I find it hard to explain how much my wife's love means to me. . . . The loss of my wife would not only bring me extreme hardship but would make my life unbearable." No additional evidence was submitted concerning the potential emotional or psychological effects of the applicant's removal on her husband. The evidence does not establish that any emotional harm the applicant's husband is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 familial and emotional bonds exist.

There is no evidence on the record concerning potential hardship to the applicant's husband if he were to relocate to the Philippines, such as information about any family ties in the United States, economic conditions in the Philippines or access to medical care there. Without such evidence the AAO cannot determine whether relocating to the Philippines would result in hardship to the applicant's husband that would be more severe than that normally experienced as a result of deportation or exclusion.

Based on the evidence on the record, the emotional and physical hardship that the applicant's husband would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen husband as required under section 212(i) of the Act.

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. 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.