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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: BALTIMORE, MARYLAND Date: SEP 16 2008

IN RE: Applicant: [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.

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, Baltimore, Maryland, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It is noted that the applicant, through counsel, requested a 30-day extension to submit a brief and/or evidence to the AAO, but nothing was submitted within 30-days. *Form I-290B*, filed May 5, 2005. On August 28, 2008, in response to a facsimile transmission from the AAO, counsel indicated that all arguments were submitted on the Form I-290B and supporting documents are already in the record. The record is considered complete.

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 the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting herself in order to obtain a nonimmigrant visa to enter the United States. The record indicates that the applicant is married to a United States citizen and 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 her United States citizen husband and son.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated April 18, 2005.

On appeal, the applicant, through counsel, asserts that the District Director erred in denying the applicant's Form I-601. *See Form I-290B*, filed May 5, 2005.

The record includes, but is not limited to, counsel's statement, the applicant's birth certificate, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) 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 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 record indicates that the applicant initially entered the United States on July 15, 1998, on a B-2 nonimmigrant visa.<sup>1</sup> On July 23, 2004, the applicant’s United States citizen husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Form I-601. On April 4, 2005, the applicant’s Form I-130 was approved. On April 18, 2005, the District Director denied the applicant’s Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her 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 herself 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 husband. 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 (Board) 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 asserts that the applicant’s United States citizen husband will suffer extreme hardship if the applicant is removed to the Philippines. Counsel states that the applicant’s husband “has been employed as a regional manager for Everyready [sic] battery company for over 10 years...[and] does not speak Tagalog and would have virtually no chance to be employed in the Philippines.” *Form I-290B, supra*. The AAO notes that the applicant has not established her husband has no transferable skills that would aid him in obtaining a job in the Philippines. Counsel claims that the applicant’s husband “has shared custody of his daughter from a

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<sup>1</sup> The AAO notes that the applicant’s name, date of birth, and marital status were listed incorrectly on the applicant’s visa application.

previous marriage. He cares for her three weekends per month... [The applicant's husband] is required to and willingly pays child support to his ex-wife for the support of their daughter. He could not do this if he lived in the Philippines." *Id.* The AAO notes that there was no documentation submitted establishing that the applicant's husband will be unable to find a job in the Philippines, and unable to provide child support to his daughter. Counsel states the applicant's husband "is suffering from hypertension." *Id.* The AAO notes that there was nothing from a doctor indicating exactly what the applicant's husband's medical issues are, any prognosis or what assistance is needed and/or given by the applicant. The AAO notes that there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical conditions in the Philippines or that he has to remain in the United States to receive medical treatment. Additionally, the AAO notes that the applicant's husband did not provide a statement regarding what, if any, hardship he would suffer if he joined the applicant in the Philippines. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanies her to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, in close proximity to his daughter and maintaining his employment. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's husband "has received an advance in his pay from his employer which the couple used as a downpayment on their home." *Id.* The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her 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).

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 Board 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. The AAO recognizes that the applicant's United States citizen husband 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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)(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.