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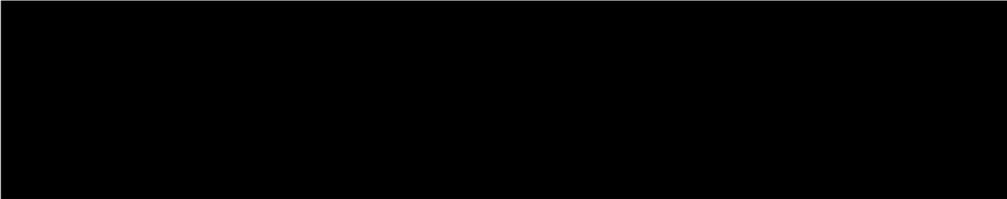
Date: MAR 27 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 Acting District Director, Manila, Philippines. 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a lawful permanent resident of the United States 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(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his wife and naturalized United States citizen son.

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

On appeal, the applicant, through counsel, asserts that the decision denying the applicant's Form I-601 was erroneous. *Form I-290B*, filed August 1, 2005. Additionally, counsel claims that the denial of the applicant's admission into the United States would result in extreme hardship to his lawful permanent resident spouse. *Id.*

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's spouse, a letter from [REDACTED] dated October 5, 2004, and numerous country reports and articles on the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
  - ...
  - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
  - ...
- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The AAO notes that the record contains several references to the hardship that the applicant's naturalized United States citizen son would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) 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 a United States citizen or lawful permanent resident son. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant and [REDACTED] were married on June 27, 1966, in the Philippines. The applicant entered the United States on a B1/B2 nonimmigrant visa on February 26, 2002. On May 24, 2002, the applicant's son, [REDACTED] filed a Form I-130 for the applicant, which was approved on October 9, 2002. On September 18, 2003, the applicant departed the United States. On January 15, 2004, the applicant's spouse became a lawful permanent resident. On April 22, 2005, the applicant filed a Form I-601. On June 28, 2005, the Acting District Director denied the applicant's Form I-601, finding that the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his lawful permanent resident spouse. The applicant is attempting to seek admission into the United States within 10 years of his September 18, 2003 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) 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 applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 asserts that the applicant's spouse would face extreme hardship if she relocated to the Philippines in order to remain with the applicant. The applicant's wife claims she cannot join her husband in the Philippines because she "shall be considered to have abandoned [her] lawful permanent resident status." *Affidavit of* [REDACTED] dated January 14, 2005. However, the applicant's wife's status as a lawful permanent resident allows her to make brief and casual visits to the Philippines. The applicant's wife claims that she would not be able to afford to travel to the Philippines to visit the applicant, and her "family could not afford the added expenses." *Id.* The AAO notes that the applicant traveled to the United States in 1999 and 2002, staying for

several months without employment, and there has been no evidence submitted demonstrating that the applicant cannot afford to have his wife come to the Philippines for visits. The applicant's wife states she "does not feel safe in the Philippines because of the presence of communist rebels, especially in the rural areas." *Id.* The AAO notes that the applicant's wife spent sixty-three (63) years of her life in the Philippines with, presumably, no problems from the communist rebels. The applicant's wife states she is "very depressed over [redacted] immigration problems... This dilemma is taking a toll on [her] overall emotional well being." *Id.* Additionally, she states she suffers from hypertension. *Id.* [redacted] states the applicant's wife "suffers from reactive depression secondary to the separation from her husband... Her anxiety level has been extremely high at this time causing her blood pressure to be persistently elevated despite taking medication for hypertension." *Letter from [redacted]*, dated October 5, 2004. The AAO notes that the only evidence submitted of the applicant's wife's hypertension is the letter from [redacted] who is a Geriatric Psychiatrist. Additionally, there are no full psychological evaluations of the applicant's wife for the AAO to review to determine what personal issues are affecting the applicant's spouse's emotional and psychological wellbeing. Counsel contends that the applicant's wife has strong family ties in the United States. *Brief attached to Form I-290B*, page 9, dated July 19, 2005. The applicant's wife states her only family tie to the United States is her naturalized United States citizen son, who is a married adult with his own family. The applicant's wife has a daughter and her husband in the Philippines. Additionally, the applicant's wife is a native and citizen of the Philippines, who spent the majority of her life in the Philippines. Counsel claims that the applicant's wife "has totally assimilated into the American way of life." *Id.* However, the applicant's wife states she has "fear" and "uncertainties of being a newly transplanted immigrant." *Affidavit of [redacted]* *supra* at page 4. She also claims if the applicant were in the United States she "could adjust faster to [her] new life and home country." *Id.* Therefore, it does not appear that she has completely "assimilated to the American way of life," but has fear of living in the United States without her husband. Counsel also states that there is insufficient medical care in the Philippines for the applicant's wife's medical condition. *Brief attached to Form I-290B*, *supra* at page 9. The AAO notes that counsel failed to provide any evidence on what medical conditions the applicant's wife suffers from, other than a letter from a psychiatrist, stating the applicant's wife suffers from hypertension. Counsel cites the poor economic conditions and general instability in the Philippines as further reasons that the applicant's wife cannot return there.

Counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, with access to adequate health care and in close proximity to her son. As a lawful permanent resident, 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. No documentation was submitted to indicate that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant, and there is no evidence that the applicant has ever contributed financially to his wife. The applicant's wife states her son supports her and sends money to the applicant in the Philippines. *Affidavit of [redacted]*, *supra*. 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). Further, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to his wife'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).

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in the Philippines and the emotional hardship of separation, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. The AAO notes that when the applicant's wife entered the United States, she knew that the applicant had immigration problems and that there may be a period of separation. 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, and has endured, 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 section 212(a)(9)(B) 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.