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[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA

Date: JAN 22 2004

IN RE: Applicant:

[Redacted]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 (U.S.) 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 into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. lawful permanent resident, and she 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).

The acting district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly.

On appeal, counsel states that the acting district director abused her discretion by failing to thoroughly analyze the facts and evidence in the case and by misapplying precedent law regarding extreme hardship. Counsel states that the acting district director ignored the applicant's husband's (Mr. [REDACTED] family ties in the United States. Counsel additionally asserts that the hardship his 17-year-old lawful permanent resident step daughter would suffer upon separation from her mother would cause extreme emotional hardship to Mr. [REDACTED]. Counsel asserts further that the acting district director erred in not assessing the hardship Mr. [REDACTED] would suffer based on his worries about his wife's health and safety in the Philippines.

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 [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 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.

In the present case, the applicant must demonstrate extreme hardship to her lawful permanent resident spouse. It is noted that Congress specifically did not include hardship to the alien or to the applicant's children as factors to be considered in assessing extreme hardship. Thus, any hardship that the applicant or her lawful permanent resident daughter would suffer will not be considered in this decision.

Counsel asserts that due to their different purposes and scope, the extreme hardship standards set forth in past suspension of deportation and section 212(h), 8 U.S.C. § 1182(h) legal cases, should not be applied to immigration cases involving section 212(i) of the Act. Counsel implies that the

inadmissibility bar under section 212(a)(6)(C) of the Act is less serious than criminal or deportation based grounds addressed in suspension of deportation or section 212(h) proceedings, and that the standard for extreme hardship under section 212(i) should thus be construed more broadly. The AAO notes that the fact that laws in recent years have limited rather than extended the relief available to aliens who have committed fraud or misrepresentations goes contrary to counsel's assertion that section 212(i) waivers should be broadly applied.

In addition to significant amendments made to the Act in 1996 by IIRIRA Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). Moreover, the Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act. In 1990, section 274C of the Act, 8 U.S.C. § 1324C, was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act." Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including "impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name." *See 18 U.S.C. § 1546.*

Moreover, the Board of Immigration Appeals (Board) stated in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) that:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board then outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

In the present case, the record reflects that Mr. [REDACTED] is a native of the Philippines, and that he

immigrated to the U.S. at the age of 30, approximately 14 years ago. Counsel asserts that Mr. [REDACTED] would suffer emotional hardship if his wife returned to the Philippines, due to their separation and due to his concern regarding her medical condition. Counsel asserts that Mr. [REDACTED] would also suffer financial hardship because he is unemployed and his wife is currently the sole financial contributor to his household. Counsel asserts further that the applicant would miss his U.S. lifestyle and his brothers and sisters if he returned to the Philippines, and that he would suffer financial hardship in the Philippines because he may not find work there. Counsel additionally asserts that according to a January 2003, U.S. Department of State travel advisory, it is dangerous for U.S. citizens to be in the Philippines.

The AAO notes that the record contains no evidence to substantiate the claim that the applicant's husband is financially reliant on the applicant in the U.S., or to indicate that either he or the applicant would be unable to find work in the Philippines. The AAO additionally notes that the record does not reflect that the applicant suffers from a physical condition that is severe or that could not be medically treated in the Philippines. Furthermore, the AAO notes that the U.S. Department of State, U.S. citizen travel advisory is general in nature, and does not establish that Mr. [REDACTED] would face danger if he returned to the Philippines.

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. Moreover, the U.S. Supreme Court 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that if she were removed from the United States, her husband would suffer hardship beyond that normally suffered upon removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.