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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: [illegible] 2004

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.

Robert P. Wiemann, Director
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 (U.S.) under § 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. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

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. On appeal, counsel states that Citizenship and Immigration Services (CIS) abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Counsel states that the applicant demonstrated that his wife would experience extreme hardship, in particular because the hardship that the applicant's U.S. citizen child would suffer would result in extreme emotional hardship to the applicant's wife.

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 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 § 212(a)(6)(C) 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 the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen child will therefore not be considered in this decision.

The AAO notes that laws in recent years have limited rather than extended the relief available to aliens who have committed fraud or misrepresentation 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 the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), 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.*

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 the applicant and his wife are both from the Philippines, where his wife lived until she was about 20 years old. The applicant and his wife have a son of about six years old. The applicant's wife noted that she has a bachelor's degree in education from a Filipino university, and the applicant has a nursing degree, also from the Philippines.

In her 2002 affidavit, the applicant's wife stated that she would suffer extreme hardship if she were separated from the applicant and also if she chose to relocate to the Philippines. The applicant's wife wrote that both her parents are U.S. citizens who reside in the United States, and that she has essentially cut all social ties with people she knew in the Philippines. She also wrote that she believes neither she nor the applicant would be able to obtain employment in the Philippines in their fields of study. She stated that whether she remained in the United States or accompanied the applicant back to the Philippines, she would suffer financial hardship. She stated that she would suffer upon seeing her son either separated from his father or forced to live in a country with less opportunity than in the United States. She also wrote that she has high cholesterol and requires medical monitoring, and she is concerned that in the Philippines, medical care is not as good as here in the United States.

The record does not establish that the applicant's wife would suffer extreme hardship whether she chooses to remain in the United States or accompany the applicant to the Philippines. Regarding her medical concerns, the doctor's note provided does not specify what her current condition is, other than to note that it requires routine medical follow-up. There is no evidence that she requires treatment which is unavailable in the Philippines. The record does not establish that the applicant and his wife, who have degrees in nursing and education, respectively, would be unemployed or under-employed in the Philippines. The record also does not show that, in the applicant's absence, the applicant's wife would be unable to make budget and household adjustments to accommodate the changed situation. 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). There is no evidence on the record that the effect of the applicant's inadmissibility on the applicant's son would cause the applicant's wife to suffer extreme hardship. The AAO notes that the record contains no evidence showing that the applicant's son would be harmed in any way by relocating to the Philippines, and the evidence does not show that relocating the applicant's son would emotionally harm the applicant's wife.

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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. 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.