U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H-2

[redacted]

FILE: [redacted] Office: PHOENIX, AZ (RENO, NV) Date: JUL 22 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

data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The waiver application was denied by the Interim District Director, Phoenix, Arizona. The matter 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 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 having procured admission into the United States (U.S.) by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and she seeks a waiver of inadmissibility under section 212(i) of the Act, in order to remain in the U.S. with her husband and to adjust her status to that of a lawful permanent resident.

The interim district director concluded the applicant had failed to submit evidence to establish that extreme hardship would be imposed on her husband. The application was denied accordingly.

On appeal, the applicant asserts that that her husband (Mr. suffers sports-related physical injuries that limit his ability to find work in the U.S., and that would prevent him from finding any work in the Philippines. The applicant asserts that her husband requires physical therapy for his injuries and that, because she is a nurse, she is able to provide therapy to her husband which he would otherwise be unable to afford. The applicant additionally asserts that her husband has family ties in the U.S. and that he would suffer emotional hardship if he were separated from his siblings in the United States.

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:

> The Attorney General [now, Secretary, 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.

The record contains the following evidence pertaining to hardship:

> A March 27, 2003, medical "Certificate to Return to School or Work" from the Washoe Therapy Center in Reno Nevada remarking that Mr. has a history of Planta Fascitis and shoulder and ankle pain.
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> A March 27, 2003, medical summary from the Washoe Therapy Center in Reno Nevada, prescribing four weeks of bi-weekly physical therapy treatment for Mr. ankle pain.
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> A list of the names and Ohio and Maryland-based addresses for six of Mr. siblings.

> A March 31, 2003, affidavit written by stating that he suffers from serious shoulder, foot and ankle pain which limits his employment abilities, and stating that he relies on the applicant to help him with his medications and to administer his physical therapy. Mr. additionally states that he would be unable to find work in the Philippines, and that as a U.S. citizen he would be at risk of being kidnapped or assassinated by anti-American groups operating in the Philippines also states that the applicant is pregnant and that it would cause him emotional hardship to be separated from his family if he remained in the United States. states further that he would suffer emotional hardship if he were separated from his ten siblings in the United States.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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 pursuant to section 212(i) of the Act. 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.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1423 (9th Cir. 1987) (citing *Bastidas v. INS,* 609 F.2d 101 (3rd Cir. 1979). U.S. court decisions have also repeatedly held, however, 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). 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. *Id.* Moreover, the U.S. 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).

The AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if she were removed from the United States. The medical information submitted by the applicant does not establish that uffers from a serious physical or medical condition, or that he requires on-going physical or medical therapy on account of his condition. The AAO notes further that the evidence fails to establish that the applicant provides medical assistance to or that her assistance is required. Moreover, the AAO finds that the medical evidence submitted fails to establish that ability to find work is in any way affected by his physical condition. The AAO finds further that the record contains no evidence to demonstrate that would be unable to find work if he returned to the Philippines or that he would be harmed in the Philippines because he is a U.S. citizen. Indeed, the evidence contained in the record reflects that has resided in the United States for less than two years, and that he was born in the Philippines. The record reflects that mother is a native of the Philippines, and that he grew up,

worked, married, had a child and lived in the Philippines his entire life until October 2001.[1] The AAO notes further that the applicant obtained derivative U.S. citizenship in the Philippines through his father in June 1996, and that the brothers and sisters he has residing in Maryland and Ohio appear to be half-siblings whom he did not grow up with or possibly even meet prior to October 2001.

The AAO finds that the evidence in the present record, when considered in its totality, fails to demonstrate that would suffer extreme hardship if the applicant were removed from the United States.

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.

[1] The AAO notes that pursuant to a Nevada Court Order, the applicant obtained a default divorce from his wife in the Philippines in December 2002.