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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date:

IN RE: [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 inadmissible to the United States 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 gained admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved I-130 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), in order to remain in the United States with his wife and son.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the I-601 Application for Waiver of Grounds of Inadmissibility accordingly. *Decision of the District Director*, dated September 3, 2003.

On appeal, counsel contends that the applicant's removal from the United States would cause extreme hardship to the applicant's United States Citizen wife. Counsel submitted an attachment to the Notice of Appeal in which he contends that the United States Citizenship and Immigration Services (CIS): 1) did not thoroughly analyze all the facts and evidence submitted in the applicant's waiver application; 2) failed to consider all relevant factors in determining whether extreme hardship exists; 3) incorrectly analyzed extreme hardship using principles and standards developed for evaluating forms of relief from deportation, and not waivers of inadmissibility; 4) misstated the law when it stated that extreme hardship to the family of the qualifying relative should never be considered, because the fact that the family's hardships will inflict additional hardships on the applicant's wife is a qualifying factor; 5) failed to properly balance the equities against adverse factors required to decide whether the waiver is merited as a matter of discretion. Counsel did not explain how any of these points related to the facts of this case.

In support of the I-601, counsel had previously submitted an affidavit from the applicant's wife and tax returns for the applicant and The entire record was considered in rendering this decision.

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.

The record reflects that on May 29, 1992, the applicant used a Philippine passport with the name to obtain admission to the United States, making him inadmissible under the Act.

Section 212(i) of the Act provides that:

> 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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by 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).

The concept of extreme hardship "is not . . .fixed and inflexible," and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First analyzed is the financial impact of the applicant's departure from the United States. The applicant works full-time as a process server. The applicant's wife, [redacted] works full-time as a medical encoder. [redacted] stated that she and the applicant both need to work to support their family, however, the record contains no evidence supporting this claim. Additionally, [redacted] parents and brothers live in the United States, and there is no evidence in the record suggesting that they could not assist [redacted]

The next *Cervantes* factor is country conditions in the Philippines. [redacted] stated in her affidavit that it would be impossible for her and the applicant to live on the income they would earn in the Philippines because the economy is on the decline and they would not be able to find suitable employment. No evidence is provided to support this claim.

Another *Cervantes* factor is significant health conditions. Neither counsel nor the applicant referred to any health problems suffered by [redacted]

The final Cervantes factor is family ties in the United States and the Philippines. The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals has held that separation from family may be "[t]he most important single [hardship] factor," and "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted).

married the applicant in 1996. Their son was born the same year. stated that forcing the applicant to return to the Philippines would cause hardship to and to The record contains no documentary evidence addressing the possible effects of separation. Also, Ms. has the option of moving to the Philippines with the applicant, whose parents still live there. Should choose to stay in the United States with they have a family network consisting of Ms. parents and brothers.

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. The AAO recognizes that Ms. will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion 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 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(i), the burden of establishing that the application merits approval 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.