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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: NOV 01 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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. 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. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen and father of a U.S. citizen child. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and child.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that the district director failed to consider all the relevant factors, failed to weigh the facts tending to show hardship in the aggregate, used the improper legal standard in evaluating the applicant's claim, improperly excluded consideration of hardship to the qualifying relative's extended family, and failed to properly balance discretionary factors. In support of the appeal, counsel submits a brief, a supplemental affidavit, country conditions materials, and medical documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of an assumed name to obtain a visa and admission to the United States. *Decision of the District Director* (August 25, 2003) at 2. The applicant does not contest the district director's determination of inadmissibility. Section 212(i) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien himself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined 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 set forth a list of non-exclusive factors relevant to determining 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 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," 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). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

Counsel asserts that precedent cases related to the extreme hardship finding under former statutes dealing with the now-repealed relief of suspension of deportation should be inapplicable to extreme hardship findings under INA § 212(i). Counsel does not contend that the factors used by the district director to analyze extreme hardship are improper. Rather, counsel asserts that applicants seeking waivers under 212(i) are entitled to a more lenient interpretation of the level of hardship that rises to the level of "extreme." Counsel contends that, although suspension also required an examination of whether "extreme hardship" is established, CIS should more broadly interpret the phrase in the context of a 212(i) waiver than for suspension of deportation, because a 212(i) applicant has greater inherent equities as an individual who is otherwise qualified for an immigrant visa, than an applicant for suspension, who generally has no other basis for adjustment of status other than the "exceptional" relief of suspension of deportation. *Brief in Support of Appeal,* at 28. Similarly, counsel contends that a narrow interpretation of "extreme hardship" is warranted for waivers of inadmissibility based on criminal activity, but not inadmissibility based on fraud, "a relatively minor offense," as the applicant is charged. *Brief in Support of Appeal,* at 27.

The AAO finds counsel's assertions in this regard unpersuasive. It is true that applicants for suspension of deportation were by definition seeking relief from deportation proceedings and may not have had other means to adjust status, where the instant applicant has not been placed into proceedings and may be otherwise eligible for adjustment of status based on an approved immediate relative petition filed by his U.S. citizen wife. Nevertheless, the Act provides that individuals who committed fraud within the meaning of INA § 212(a)(6)(C)(i) are inadmissible to the United States, with a waiver available as a matter of discretion only after extreme hardship to a qualifying relative is established. There is no support for counsel's contention that applicants for waivers under 212(i) are entitled to a more favorable or broader interpretation of the extreme hardship standard. By limiting the availability of the 212(i) waiver to applicants who establish extreme hardship to a qualifying relative, Congress declined to provide that a waiver should be granted in every case where a qualifying relationship exists. To the contrary, by invoking the established "extreme hardship" standard, Congress was explicitly defining the extent to which equities could be taken into account. By choosing to impose the same standard on aliens inadmissible for criminal activity as those who committed fraud, and by placing even greater limitations on which relatives qualify for the hardship determination (spouse and parents only as opposed to spouse, parents, and children), Congress evinced an intent to treat fraud under the Act as a very serious offense, at least as serious as certain criminal offenses for purposes of waivers of inadmissibility. Counsel's citation of INA § 237(a)(1)(H), 8 U.S.C. § 1227(a)(1)(H), as support for the contention that inadmissibility based on fraud is less serious than inadmissibility based upon a criminal offense, and thus justifies a broader reading of the extreme hardship standard, is inapposite. Section 237(a)(1)(H) of the Act provides a for a waiver of deportability on grounds of inadmissibility based on fraud, in the discretion of the Attorney General and without requiring a finding of extreme hardship, *only* when the alien is the spouse, parent, or child of a U.S. citizen or lawful permanent resident *and* "was *in possession of an immigrant visa* or equivalent document and was otherwise inadmissible *at the time of such admission . . ..*" INA § 237(a)(1)(H)(i), 8 U.S.C. § 1227(a)(1)(H)(i) (emphasis added). This limited waiver is inapplicable to the present case, and does not otherwise shed light on the well-established "extreme hardship" standard and case law.

Turning to the facts of the present case, the applicant's wife [redacted] submitted a statement in connection with the appeal stating the following: She is a naturalized citizen who has lived in the United States since 1991. She and the applicant married in 1999 and have one son, aged four years. Her elderly U.S. citizen mother and father [redacted] live in the home, which was purchased in 2001. Her mother was treated for ovarian cancer and continues to undergo medical treatment, to maintain her health and minimize the likelihood of a reoccurrence if the cancer. She also suffers from high blood pressure and diabetes. Her father also suffers from high blood pressure and neuropathy, "a nerve disorder that affects his legs and ability to walk." *Supplemental Statement of Janice Simon Mariano Hernandez* (October 15, 2003). [redacted] is a licensed vocational nurse, as is the applicant. Their medical backgrounds contribute significantly to their ability to care for [redacted] parents. She states that she is her parents' only child residing in the United States. She expresses concern that she would be unable financially to maintain the household in the absence of the applicant, and would not to take her parents with her to the Philippines if she returns there to avoid separation with her husband, in particular due to inadequacy of medical care, the depressed economy, and environmental concerns. *Id.* Counsel adds that Ms. Hernandez is now "accustomed to [U.S.] society and working environment." *Brief in Support of Appeal* (October 16, 2003). Counsel also

makes similar assertions with respect to country conditions in the Philippines and the family's circumstances as does . The AAO notes that assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

Documentation submitted with the appeal includes a letter from doctor indicating that he is "presumed" to have "peripheral neuropathy," causing weakness, numbness and cramps in his legs. *Letter of Larry Vigilia, MD* (September 23, 2003). The letter indicates that follow-up in the form of a muscle biopsy is required to pinpoint the cause of the weakness in his legs. *Id.* The neurologist confirmed the diagnosis of neuropathy and "elevated CPK" and stated that he has not prescribed medication. *Note from Bruce A. Finstead, MD* (November 3, 2003). CPK is not defined in the evidentiary materials. There is no background information on the condition "peripheral neuropathy." The record does not contain documentation of Mrs. health.

Country conditions documentation included with the appeal focus on the dangers to U.S. citizens traveling to the Philippines, particularly Mindanao Island, due to terrorist activity, including kidnappings, bombings, and murder. U.S. Department of State, *Public Announcement: Philippines* (July 16, 2003). The documentation does not address the economy, environment, or the availability of medical care for the individuals who live there, or whether, in view of her long absence from the country, would be viewed as an American for purposes of an increased risk of targeting by terrorist groups active in the Philippines, or whether, as a native Filipino, she is at no more risk than any other resident. There is insufficient documentation to show the relationship between country conditions and the specific hardships feared by Ms. and the AAO cannot find, based on a single, brief report directed at travelers, that return to the Philippines, *per se,* constitutes extreme hardship.

The AAO concurs with counsel that, although they are not qualifying relatives under the statute, hardship to may be relevant to the aggregate hardship faced by the qualifying relative if the applicant is refused admission. However, there is insufficient objective evidence in the record to establish that the presence of is required in order to provide adequate care for them or that they are unable to care and provide for themselves. The medical documentation in the record does not establish that her parents are debilitated to the extent that they cannot manage the tasks of daily life without assistance. Further, there is no documentation on the record of their assets and whether the departure of the applicant and his wife would render them without support and in need of the particular financial or other support of Ms. thus contributing to the hardship she faces.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of*

Shaughnessy, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the Ninth Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. Inability to pursue one's chosen career or a reduction in standard of living does not necessarily result in extreme hardship. *See Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.") The record in this case does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises to the level of extreme as contemplated by the statute and case law.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). As the applicant failed to establish statutory eligibility, no purpose would be served by discussing whether she merits a favorable exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.