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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: NOV 18 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 who 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 mother of a U.S. citizen daughter. She seeks a waiver of inadmissibility to remain in the United States with her family and adjust her status to that of a lawful permanent resident.

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

On appeal, counsel contends that the applicant established on the record below that refusal of her admission would result in extreme hardship to her U.S. citizen spouse. In support of the appeal, counsel submits a brief and a Department of State Public Announcement concerning country conditions in the Philippines. 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 1994 fraudulent submission of a passport with an assumed name to procure entry to the United States. *Decision of the District Director* (September 17, 2003) at 2. The district director's determination of inadmissibility is not contested by the applicant.

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 a qualifying relative, a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute. The only qualifying relative in the instant case is the applicant's husband.

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).

The AAO notes that the record contains references and documentation addressed to the hardship that the applicant's child would suffer if the applicant were refused admission. As noted above, section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Hardship to the applicant's child will therefore be taken into account only as it contributes to the overall hardship faced by the only qualifying relative in this case for whose benefit the waiver can be granted, the applicant's U.S. spouse.

The applicant's husband [redacted] was born in the Philippines. He immigrated to the United States in 1987, at age 34, and became a naturalized U.S. citizen in 1996. He and the applicant married in 1996. The couple's only child was born in California in 1996. A review of the record for evidence of other family ties in the United States and overseas reveals that [redacted] parents live in the Philippines (Manila). Form G-325, *Biographic Information for Dante M. Cruz* (July 8, 1997). The applicant's mother and father also reside in

the Philippines (Batanes). Form G-325, *Biographic Information for Myra A. Cruz* (July 8, 1997). indicates that he has not returned to the Philippines since 1990, and that the couple currently sends financial assistance to the applicant's parents for the mortgage on her parent's home in Batanes. *Statement of Dante Cruz* (June 30, 2003).

The record reflects that the applicant suffers from eczema, allergies, and asthma. While copies of prescription medication labels are in the record, there is no further medical documentation that these conditions constitute significant health conditions, that medications to control these conditions are unavailable in the Philippines, and that the impact of these health conditions contributes to the hardship faced by f the applicant is refused admission.

Counsel also notes that and the couple's child will have significant difficulties if they relocate to the Philippines to avoid separation from the applicant. Counsel asserts that long absence from the Philippines will result in readjustment difficulties. Counsel also notes that the couple's child knows very little Tagalog and would have great difficulty assimilating into a new culture. The record reflects that earns his living as a parking valet and the applicant as an accounting clerk. Counsel states that these jobs are nearly non-existent and difficult to find without an extensive network of contacts, and the resulting financial impact will be great. Counsel stresses country conditions in Batanes. There is no evidence on the record showing that the applicant must return to a particular region in the Philippines. In any event, there is no evidence in the file to support counsel's assertions regarding the economy and weather in Batanes, and, less favorable economic conditions and/or weather patterns in the applicant's home country do not, without significantly more evidence of hardship than is present in the instant case, lead to a finding of extreme hardship to the applicant's qualifying relative.

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 he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 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 applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate to avoid separation. Refusal of a spouse to relocate, without a finding of extreme hardship if the spouse relocated with the applicant, is a matter of choice and does not, without more, create a hardship rising to the level of extreme. The BIA has held, "[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). In this case, the record does not contain sufficient evidence to show that the particular hardship faced by the qualifying relative rises beyond common difficulties of either separation or relocation to the Philippines, to the level of extreme. *See Ramirez-Durazo, supra.*

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). Inasmuch as the applicant has failed to establish statutory eligibility, no purpose would be served in 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.