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U.S. Citizenship and Immigration Services

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[redacted]

NOV 30 2004

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

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 Acting District Director, San Francisco, California. The Interim District Director subsequently denied the application for adjustment of status, because he found that the applicant had failed to file a timely appeal of his waiver denial. The District Director, however, later determined that the applicant had filed a motion to reopen the denial of his waiver application in a timely manner, so Citizenship and Immigration Services (CIS) reopened the application but found that it did not warrant approval. The application for a waiver of inadmissibility 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 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 entry into the United States by using a fraudulent seaman's card to obtain a U.S. C1/D visa under an assumed name. The applicant is married to a citizen of the United States and is the beneficiary of an approved petition for alien relative. He seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the U.S. with his wife.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon the applicant's spouse and denied the application accordingly. On appeal, counsel asserts that the applicant's wife would suffer extreme hardship if she returns to the Philippines with the applicant, because she experienced problems with the government in that country which led to her grant of asylum in the United States. Also, counsel states that the applicant's wife has health problems, and she would receive inadequate care in the Philippines. Counsel contends that the applicant's wife would also suffer extreme hardship should she remain in the United States without her husband, as she will be unable to cope alone with the household expenses and her medical problems.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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 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 lawfully resident spouse or parent. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

Counsel points out on appeal that the Board of Immigration Appeals (BIA) case, *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or U.S. 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.

The AAO additionally notes that 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). However, it is also noted that 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA 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.

Counsel had submitted the brief and documents under consideration by the AAO to the district director as a motion to reopen, apparently based on "new" evidence. Counsel is reminded that a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3). Here, no evidence in the motion contains new facts that were unavailable at the time of the applicant's 2002 waiver application. For example, counsel submits documents relating to the applicant's wife's 1995 grant of asylum, the applicant's wife's medical situation, and the applicant's and his wife's financial matters. Nevertheless, the AAO has considered all the documentation on the record and finds that the applicant has not established that his wife would suffer extreme hardship due to his inadmissibility.

The AAO agrees that the applicant's wife could face extreme hardship if she returns to her native Philippines, since she fled that country originally due to problems with the government. However, the record does not establish that she would suffer extreme hardship if she remains in the United States. The doctors' notes on the record indicate that the applicant's wife suffers from depression and other, unspecified health problems. There is no information regarding what health problems, other than depression, afflict her, or independent

documentation that any or her health problems are due to or could be worsened by the applicant's inadmissibility. The record contains financial documents, but there is no evidence that the applicant's wife could not alter her budget or otherwise make adjustments in her fiscal situation. The record reflects that the applicant's wife is gainfully employed; there is no evidence that she would suffer extreme financial hardship if the applicant is removed from the United States. The AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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.