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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: OCT 26 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

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prevent [illegible] warranted
[illegible] invasion of privacy

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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.

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

On appeal, counsel contends that the applicant established extreme hardship on the record below. In support of the appeal, counsel supplements the record with a brief and an additional declaration from the applicant's husband. 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 fraudulent use of a passport to procure admission into the United States. *Decision of the District Director* (October 9, 2003) at 1. 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). Hardship to the alien herself is not a permissible consideration under the statute. 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.

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 record primarily stresses the emotional impact of potential separation of the applicant and her husband. If he remains in the United States, his concerns center on anguish over the separation itself and concern for his four-year-old son having to separate from himself or the applicant. *Additional Declaration of Gary B. Paguyo* (October 13, 2003); *Declaration of Gary P. Paguyo* (July 6, 2003). If he were to relocate to the Philippines to avoid separation from his wife, he expresses fear of terrorism in the Philippines, difficulties adjusting to a different country (including inability to speak the language), and sadness of separation from his family, including his parents and brother. *Id.* Although he is of Filipino descent, he was born in the United States and has never lived in the Philippines. He stated that he had a bad reaction to the humidity on a prior visit there, but there is no evidence in the record to support a finding that he suffers from a medical condition. *Id.*

Concerns over the financial impact include the inability to pursue his chosen career in the Philippines, the overall reduced economic opportunities in the Philippines, and the drain on resources of traveling to and from the Philippines to visit. Additionally, the couple purchased a home together and rely on both incomes to maintain the household. *See Bank of America Loan Information* (June 17, 2003). The applicant's husband is trained as a certified public accountant, and the applicant is a nurse. The record lacks objective evidence of

country conditions in the Philippines, in particular to support the claim that these skills would not contribute to employability in the Philippines and other claims regarding conditions in the Philippines. Sample pay stubs on record (assumed to be representative in the absence of other evidence) show that the applicant provides approximately 43% of the couple's $3398 monthly net income. Applicant's Exh. O to Form I-601. Counsel prepared a sample annual budget to show the financial impact of the loss of the applicant's salary from the household income. *Id.* This statement, of limited probative value due the lack of corroborating evidence, purports to show an annual budgetary shortfall of $16,126 without the income of the applicant. The AAO notes that the applicant is a nurse and has not demonstrated that she would be unable to be employed and contribute to the family's finances from overseas. The same statement also shows nearly $12,000 of discretionary or unspecified expenses, including vacation, entertainment, cable television, $2383 of clothing, and $733 of cosmetics, and does not include a further significant discretionary expense, a monthly tithe to their church shown in other records totaling $1200 annually. The record is silent as to the present value of the couple's home, and whether a profit or loss would occur if the house were sold.

Although CIS is not insensitive to the emotional and financial losses faced by the applicant's husband, the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that he faces hardship rising to the level of "extreme" 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. The record in this case does not demonstrate extreme hardship if the applicant's spouse relocated to the Philippines to avoid separation from his wife and child. 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.") Although the applicant's spouse has not previously lived in the Philippines and claims inability to speak the language, there is no evidence in the record addressing country conditions or his inability to learn the language within a reasonable period of time. The record also does not contain evidence that the applicant's spouse would face a particular or uncommon hardship if he were separated from his brother and parents, nor does it contain evidence of their status as U.S. citizens or lawful permanent residents. Therefore, 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. 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 hardship faced by the qualifying relative rises to the level of extreme. As stated by the Ninth Circuit in *Ramirez-Durazo*, "[i]n sum, this case is devoid of those unique extenuating circumstances necessary to demonstrate 'extreme hardship' consistent with the 'exceptional nature of the . . . remedy.'" *Ramirez-Durazo, supra* at 499.

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).

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.