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**U.S. Department of Homeland Security**
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: OCT 29 2004

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, Chicago, Illinois, 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen and the daughter of lawful permanent residents of the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 her spouse and parents.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 27, 2001.

On appeal, counsel asserts that the CIS decision failed to give appropriate consideration to the emotional and physical state of the applicant's spouse and the financial and emotional reliance of the parents of the applicant on the applicant. *Form I-290B*, dated May 23, 2001.

In support of these assertions, counsel submits a brief, dated July 26, 2001; letters from physicians treating the applicant's spouse and applicant's father; copies of the resident alien cards issued to the applicant's parents; copies of tax and financial documents for the applicant and her spouse; several letters of support; a letter from the applicant, dated July 16, 2001; a letter from the applicant's father and copies of medical reports for the applicant's parents. The entire record was considered in rendering this decision.

The record reflects that in 1991 the applicant presented a fraudulent United States visa in order to procure admission into the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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.

Section 212(i) of the Act provides:

> (1) 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 lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and/or parent. 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).

*Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems 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 United States 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.

Counsel contends that the applicant's spouse would suffer extreme hardship if he relocates to the Philippines in order to remain with the applicant. Counsel indicates that the applicant's spouse has resided in the United States for his entire life and requires medical care available to him in the United States. *Memorandum of Law in Support of Appeal*, dated July 26, 2001. Counsel asserts that as a result of undergoing extensive chemotherapy, the applicant's spouse has difficulty maintaining steady employment in the United States and, therefore, would certainly be unable to gain employment in the Philippines. *Id.* In regard to the applicant's parents, counsel points out that they likewise suffer medically and are dependent on their other children in the United States and, therefore, would suffer extreme hardship if they relocated to the Philippines in order to remain with the applicant. *Id.*

Counsel fails to establish that the applicant's spouse and parents would suffer extreme hardship if they remain in the United States maintaining close proximity to other family members and ability to obtain treatment for their medical conditions. The AAO acknowledges that the applicant's spouse has experienced emotional and psychological trauma in his life stemming from his father's suicide and the loss of his mother in a drunk driving accident. *Id.* The record further establishes that the applicant's spouse has battled alcoholism and cancer. *Id.* Counsel contends, "[T]he tragedy he has suffered through is not in the past..." Id. The AAO notes, however, that the record fails to establish an ongoing relationship between the applicant's spouse and a mental health professional. The record contains a letter from a physician of internal medicine detailing the cancer suffered by the applicant's spouse and his related medical difficulties. *Letter from Jonathan C. DeLew, MD*, dated July 5, 2001. The letter states that the applicant's spouse has experienced "emotional strain" during his life, however the reporting physician does not indicate treatment undergone by the applicant's spouse as a result of his emotional suffering. *Id.* As a result, although the contentions of counsel are compelling, the record lacks the requisite detail for the AAO to render a finding of extreme hardship imposed on the applicant's spouse as a result of the inadmissibility of the applicant.

The AAO also acknowledges the physical pain and suffering undergone by the applicant's parents. *See Letter from Terrence F. Swade, MD*, dated July 20, 2001 (detailing the heart attack suffered by the applicant's

father). *See also Letter from Gerardo R. General*, undated (stating that his wife, the applicant's mother, suffered a double mastectomy). The AAO notes, however, that the record fails to demonstrate that the presence of the applicant is required for the successful treatment of her parents. The record does not establish the level or type of care required by the applicant's parents on a daily basis. Further, counsel asserts that the applicant's parents are unable to leave the United States in order to remain with the applicant because they are dependent on their children in the United States, thereby establishing the presence of support for the applicant's parents for the care they require. *Memorandum of Law in Support of Appeal.*

The AAO also acknowledges the fact that the applicant currently provides the majority of the income that she and her husband earn. *See Individual Income Tax Return 2000.* The record fails to demonstrate that the applicant's spouse is unable to cover his expenses in the absence of the applicant by providing that he was financially destitute prior to marrying the applicant or otherwise. Moreover, 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.

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 the applicant's spouse and parents will likely endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, 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 or parent 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 she 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. *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.