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

U.S. Citizenship and Immigration Services

H2

[redacted]

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

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The waiver application was denied by the Acting District Director San Francisco, California, and 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. She was found to be 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 a nonimmigrant visa by fraud or willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative as the spouse of a U.S. citizen. She now seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may remain in the United States and reside with her U.S. citizen spouse.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Acting District Director's Decision* dated May 30, 2003.

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.

Section 212(i) of the Act provides that:

> (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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the applicant admitted that at the American Embassy in Manila, Philippines she knowingly and willfully misrepresented material facts in order to procure a nonimmigrant visa. Specifically she did not inform the Consular Officer that her spouse was residing in the United States. A nonimmigrant visa was issued on June 28, 2000, and on September 24, 2000, the applicant presented that visa at the San Francisco International Airport and was admitted into the United States as a nonimmigrant visitor for pleasure.

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 on a qualifying family member. 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).

In the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse.

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

On appeal, counsel states that Citizen and Immigration Services, (CIS) failed to correctly assess the extreme hardship the applicant's spouse would suffer if the applicant's waiver application is denied and she is forced to depart the country. Counsel submits a brief, an affidavit from a psychological evaluation, and a letter from the Airport Church of Christ attesting to the applicant's good moral character. In the brief counsel states that if the applicant were forced to leave the United States would be forced to make a decision of either relocating to the Philippines with the applicant or staying in the United States. Counsel states that would suffer extreme hardship due to the unstable political, social and economic conditions in the Philippines. In his affidavit states that if he decides to relocate to the Philippines with the applicant he would be forced to leave the country he loves and cherishes, and would have to be separated from his siblings and other family members who live in the United States. Counsel further states that would lose his job and his medical insurance that is provided by his employer and that would cause financial hardship because he does not have any job prospects in the Philippines.

While the AAO understands that familial separation is difficult, the emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship.

There are no laws that require to leave the United States and live abroad. In *Silverman v. Rogers,* 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." 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. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

A report from a psychologist was submitted. The psychologist states that suffers from major depressive disorder. In addition the psychologist states that reported to him that he has episodes in which his heart rate is rapid, he cannot catch his breath, he begins to tremble, his palms sweat and feels faint. has not visited a hospital or talked to a doctor because he fears that he will be told that he is seriously ill. No additional detail of the type of treatment, if any, he is receiving was provided. There is no independent corroboration to show that current medical condition would be jeopardized if the waiver application is denied and the applicant is not permitted to remain in the United States.

The record reflects that is a native of the Philippines. No evidence was provided besides counsel's statement and documentation regarding country conditions in the Philippines that are general in nature and do not address any specific hardship would experience, to substantiate the claim that would not be able to readjust to life in the Philippines.

further states that the applicant suffers from diabetes for which she required constant treatment. Mr. states that if the applicant were forced to return to the Philippines it would be very difficult for her to find suitable medical treatment. The record contains no evidence to indicate that adequate health maintenance and medication are unavailable in the Philippines. In addition, "extreme hardship" to an alien herself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

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 (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 U.S. Supreme Court additionally 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 her U.S. citizen spouse would suffer extreme hardship if she 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.