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: SEP 14 2004

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]

PUBLIC COPY

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 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 admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her naturalized U.S. citizen spouse. She 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 and reside with her U.S. citizen spouse and children.

The 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 District Director's Decision* dated August 3, 2001.

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 record reflects that the applicant obtained a passport that did not belong to her and on April 30, 1990, she presented that passport at the San Francisco International Airport where she was admitted as a nonimmigrant visitor for pleasure. The applicant remained in the United States beyond her authorized stay and married a now naturalized U.S. citizen on September 7, 1992. She applied for asylum on August 13, 1991, but failed to appear for a scheduled interview and an Order to Show Cause was issued on August 31, 1996.

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 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 the Immigration and Naturalization Service (now 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 the same affidavit previously submitted by , a copy of Deed of Trust of a home purchased by the couple and a letter from In his letter states, "...the perpetual bar imposed by the 1997 law is absolutely extreme. It is not ordinary. To permanently separate a husband and a wife, a mother for her children is extreme. To condemn all of us to live together but in abject poverty in the Philippines is extreme cruelty." Counsel states that the emotional hardship of a permanent separation of U.S. citizen father and U.S. citizen children from the mother is extreme hardship not address in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), because the law at the time did not prescribe a perpetual bar.

Counsel's statement is not persuasive because an appeal must be decided according to the law as it exists on the date it is before the appellate body. *See Bradley v. Richmond School Board,* 416 U.S. 969, 710-1 (1974. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. If an amendment makes the statute more restrictive after the application is filed the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Mater of George*, 11 I&N Dec. 419 (BIA 1965). *Mater of Leveque*, 12 I&N Dec. 633 (BIA 1968).

In his affidavit states that the applicant is a very responsible wife and mother and if she were forced to depart the United States his children's life would become abnormal. states that he will suffer hardship due to the economic conditions in the Philippines and that he would not be able to pursue employment opportunities due to his age. In addition he states that he would lose the medical insurance that is provided by his employer and he would have to declare bankruptcy. further states that if he decides to leave the United States and relocate to the Philippines with the applicant his children would not be able to take advantage of the high level of medical and scientific technology, the excellent schools, libraries, museums, churches, and the good quality of the environment found in the United States.

In the present case the record reflects that is a native of the Philippines and no evidence was provided besides his statements regarding country conditions in the Philippines that are general in nature and do not address any hardship would experience, to substantiate the claim that he would be unable to find employment and adjust to life in the Philippines.

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).

According to documentation provided by the applicant's daughter suffers from the chronic aliment known as atopic dermatitis for which she receives medication. worries that his daughter's condition will worsen if she relocates to the Philippines with the applicant. No evidence was provided to indicate that adequate health maintenance and follow-up care and medication are unavailable in the Philippines. There is no independent corroboration to show that her medical condition would be jeopardized if she to relocates to the Philippines.

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The assertions regarding the hardship the applicant's children would suffer will thus not be considered.

The BIA noted in *Cervantes-Gonzalez,* that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from the husband or follow him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present case, it appears that was aware of the applicant's immigration violation and the possibility of being removed at the time of their marriage on September 7, 1992.

further states that if the applicant were not permitted to remain in the United States he would be unable to care for and support his children due to his employment obligations. In the alternative, if he relocates to the Philippines he would suffer financial hardship and would not be able to maintain his standard of living and support his family.

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 (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.

The issues in this matter were thoroughly discussed by the District Director in his present decision. 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.