U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

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

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 PETITIONER:

[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. 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 35-year-old 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) for fraud and misrepresentation by having sought admission to the United States with fraudulent documents. The record reflects that the applicant is the spouse of a naturalized U.S. citizen and father of a U.S. citizen child. The applicant last entered the United States in 1989, when he was apprehended by the Immigration and Naturalization Service after having presented a fraudulent I-688A, *Temporary Resident Card,* for admission to the United States. He was released pending exclusion, but it appears exclusion proceedings were never instituted.

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 has established that the refusal of his admission will result in extreme hardship to his U.S. citizen spouse based on emotional, medical, and financial effects. The entire record was reviewed and considered in rendering the decision in this case.

Section 212(i) of the Act 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). Hardship to the alien himself 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 (BIA1999). 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).

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 AAO notes that the record contains references to the hardship that the applicant's U.S. citizen child would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and hardship to the applicant's child will not be considered.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, shows that the applicant and his wife have purchased a home and vehicle and share household expenses. The applicant and his wife, like many couples, have a tight schedule with respect to arranging for childcare. His wife works two jobs between 10 a.m. and 1 a.m. Counsel indicates that the applicant, with his work schedule from 9 a.m. to 5 p.m., is critical to retrieving and caring for his child until his wife returns from her second job. Her second job contributes to the household's basic monthly expenses. The applicant contends that his wife would be unable to meet the couple's financial obligations on her own. Tax forms for 2000 show that the applicant and his wife earn roughly similar salaries. *Internal Revenue Service Form 2441, Child and Dependent Care Expenses* (showing the applicant's income as $26,423, and his wife's income as $30,650); *See also* Forms W-2, *Wage and Tax Statement*. Both the applicant and his wife worked multiple jobs during the tax year. *Id.* At least until the applicant could obtain comparable employment in the Philippines, his spouse would face a loss of approximately 46% of her household income. Counsel asserts that the applicant and his wife would therefore be at a high risk for losing their home.

Family ties of the applicant's spouse in the United States, other than the applicant's child, are not specifically addressed in the record. It appears that her father, aged 61, resides in Bellflower, California. Form G-325, *Biographic Information for Duchess Caraan* (October 1, 1996). Family ties to the Philippines are also not specifically addressed; however, the AAO notes that the applicant's spouse was born in the Philippines, although she has not resided there or visited since her entry into the United States in 1988. *Declaration of Duchess Caraan* (July 23, 1999). It appears her mother resides in the Philippines. Form G-325, *Biographic Information for Duchess Caraan, supra.* In terms of country conditions in the Philippines, where she would relocate to avoid separation from the applicant, the applicant's wife states that she would not be able to find a good job or medical coverage there. *Id.* There is no documentation of country conditions in Philippines to support the applicant's contentions regarding the economy or the availability of medical coverage or care.

Medical documentation submitted with the appeal indicates that the applicant's wife underwent a medical procedure related to cervical lesions in May 2001. *Kaiser Permanente Certification of Injury/Illness and/or*

Return to Work or School (May 31, 2001). This form shows that medical personnel placed "No Restrictions" on her activity after the procedure, including the ability to perform "lifting from floor, squatting, bending" or "sports/gymnastics." *Id.* The record has not been supplemented since 2001 regarding further impact on the health of the applicant's wife, other than routine follow-up doctor visits. She appears to be able to work a rigorous schedule and needs no special assistance from her husband due to a medical condition. This record therefore does not support a finding of a significant health condition relevant to the hardship determination.

With no evidence speaking to the impact of specific country conditions in the Philippines on the situation of the applicant and his wife, the record in this case does not support a finding that the applicant's wife would face extreme hardship if she relocated to the Philippines, her country of birth, to avoid separation from her husband. Absent a finding of extreme hardship, the BIA has held, "[t]he mere election by the spouse to remain in the United States . . . 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).

The balance of the record reflects a financial hardship if the applicant's wife continues to reside in the same home with the same mortgage and the same employment. The record does not indicate the market value of the home, whether the applicant and his wife would profit or sustain a loss from the sale of their home, housing market conditions his wife would face if she were to obtain another residence without the support of her husband, job market conditions for individuals with her skill level and experience, and availability of alternate social support resources or lack thereof. There is also no indication that her husband would be prevented from contributing to the financial support of his family from outside the United States once settled in the Philippines. Although their finances and work and child care schedules are somewhat delicately balanced, they are no more so than that of many working families, and disruption of their lifestyle is no greater hardship than the ordinary 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to his 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 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.