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

U.S. Citizenship and Immigration Services

[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, 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 to be 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 fraudulent use of an altered passport to gain admission to the United States on October 18, 1990. The record reflects that the applicant is the spouse of a U.S. citizen and the mother of one U.S. citizen son and two lawful permanent resident daughters.

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

On appeal, counsel contends that the district director failed to consider all the evidence, failed to follow the law, and abused discretion in denying the application for waiver. Counsel also contends that the delay in rendering a decision was a denial of "regulatory due process." *See Notice of Appeal to the Administrative Appeals Unit (AAU)* (March 24, 2003). In support of the appeal, counsel submits, *inter alia,* a brief, declarations of the applicant and her husband, a summary financial expenses, a family psychological evaluation, doctor's letter, tax forms, a country conditions report, and a copy of deed for the family home. 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 several references and documentation addressed to the hardship that the applicant's children 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 Federal statute for which the hardship determination is permissible, and hardship to the applicant's children will not be considered.

Counsel asserts that the applicant's husband relies on the applicant's employment and financial contributions to pay the mortgage on the family home and to provide health coverage for himself and the children. The applicant provides approximately 30% of the gross household income. *Average Monthly Income and Expenses* (March 19, 2003). Counsel asserts that the current total monthly household expenditures exceed the gross income of [redacted] *Id.* The mortgage on the family home alone constitutes approximately 50% of [redacted]s monthly gross income. The AAO notes that a prior, undated and unsworn statement of monthly expenses cited monthly food expenses as $640, the budget filed with the appeal the amount is reduced to $350, without explanation. Although food expenses have been substantially reduced, the Ramoses appear to have taken on a new, more expensive mortgage since the filing of the original waiver application. The mortgage payment on the prior budget statement was $1440; the current mortgage payment is $2172, an increase of at least 33%. The record demonstrates that the applicant is currently funding the family's health insurance plan through her employer; however, there is nothing in the record to show that Mr. Ramos cannot obtain medical insurance through his employer. The AAO also notes that, according to the more current budget statement, the Ramoses now spend an additional $500 per month, or 27% of the applicant's monthly gross income on a tithe to the church, a discretionary item that was not included in the prior budget.

[redacted] was born in the Philippines. His father is deceased, and his mother lives in the United States. *Philippine Consulate General, Consulate Report of Marriage* (undated). The most significant U.S. citizen and lawful permanent resident family ties of [redacted] in the United States are the couple's two sons, born in the Philippines, and one daughter, born in the United States. Counsel asserts that the applicant's daughter has a serious medical condition, anemia. However, evidence concerning the child's purportedly serious medical condition consists of a six-year-old, one-sentence statement by her doctor. *Letter of Joana M. Catalsan, M.D.* (January 6, 1998) ("She is currently under treatment for anemia.")

The AAO finds unpersuasive much of the psychological evaluation report that purports to support, among other things, the contention that the anemia of the applicant's daughter constitutes a serious medical condition. *Psychological Evaluation Report,* [redacted] *Ph.D.* (February 28, 2003). Many of the statements in the evaluation go far beyond psychological matters, including discussion of the economic,

social, educational, and medical conditions in the Philippines, opinions regarding whether would obtain employment, and elaborate speculation about the potential effects on the family of the applicant's removal from the United States or the family's relocation to the Philippines (such as alcohol abuse, which is not documented as an issue for this family anywhere in the record). While the evaluating psychologist has an extensive *curriculum vitae,* there are no qualifications listed demonstrating authority or expertise on Filipino country conditions, or that he has medical credentials to evaluate anemia. Furthermore, much of what is cited for support by counsel from this report is simply the narration of statements made by the applicant and her husband themselves.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if he remains in the United States and his wife 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).

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.