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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO DISTRICT OFFICE Date: SEP 2 9 2014

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 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, San Francisco. 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, who 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). The record reflects that the applicant is the spouse of a U.S. citizen, and seeks a waiver of inadmissibility to remain in the United States with her husband. The AAO notes that the applicant previously applied for a waiver of inadmissibility in 1997. The application was denied by the District Director, San Francisco, and was subsequently appealed to this office. The prior appeal was dismissed on January 25, 2001. The applicant failed to depart the United States as instructed by the district director, and again applied for adjustment of status to that of a lawful permanent resident approximately nine months later. *See Decision on Application for Status as Permanent Resident* (May 11, 2001). A waiver of inadmissibility was again required, and such application was filed on November 15, 2001. The application for waiver that is the subject of this appeal was denied on August 8, 2003.

The district director found that the applicant had failed to provide any new evidence of hardship, and again concluded that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The district director went further to conclude that the applicant did not merit a favorable exercise of discretion due to her disregard for U.S. immigration laws as evidenced by the "serious nature" of the underlying fraud. *Decision of the District Director* (August 8, 2003), at 5. The application was denied accordingly.

On appeal, counsel contends that the record below established extreme hardship to the applicant's spouse. In support of the appeal, counsel submits a brief and a supplemental statement from a licensed psychologist, who evaluated the applicant's husband. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's fraudulent use of a passport to gain admission to the United States. *Decision of the District Director* (July 24, 2003) at 2. The district director's determination of inadmissibility is not contested on appeal. 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)(1). Hardship to the alien herself 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 only qualifying relative in this case is the applicant's U.S. citizen husband.

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 statute, for which the hardship determination is permissible, and hardship to the applicant's children will not be considered.

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, [redacted] faces extreme hardship if he remains in the United States and the applicant is refused admission. The record shows that [redacted] has resided in the United States since 1979. His mother and six of his siblings reside in the United States. They assist the couple by providing childcare, as needed. He has one brother in the Philippines, his country of birth. [redacted] provides health insurance for his family through his employer. The record details the emotional hardship that [redacted] will undergo if separated from his wife, including current symptoms of depression. *Letter of Thomas Neill, PhD.* (September 30, 2003), at 4. Counsel contends that the economic outlook in the Philippines is poor, and the decline in his financial status would result in extreme hardship, in combination

with the other factors affected by the removal of the applicant. Specific documentation of the projected financial impact is absent from the record.

The record in this case demonstrates that the applicant's husband will face no greater financial, emotional, or other hardships 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.