U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under § 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. On appeal, counsel contends that the applicant's wife would suffer extreme hardship whether she chose to remain in the United States or return to her native Philippines to accompany the applicant. Counsel maintains that the applicant's wife would suffer financial hardship in either situation, and emotional hardship due to the separation from either her close relatives in the United States or the applicant. Counsel submits a statement by the applicant's wife dated September 16, 2003, copies of the applicant's deed and car payment and insurance documents, copies of family photos, and a large country conditions information packet.

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.

The record reflects that the applicant made a willful misrepresentation of a material fact by using a passport not belonging to him to enter the United States. A § 212(i) waiver of the bar to admission resulting from violation of § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself or his children experience upon deportation is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines to remain with the applicant, as all of her immediate family, except for one sister, reside in the United States. Counsel cites the poor economic conditions and general instability in the Philippines as further reasons that the applicant's wife cannot relocate there. Counsel submits country conditions information relating to human rights practices and economic conditions in the Philippines, as well as a Department of State announcement dated July 16, 2003 warning U.S. citizens to exercise caution if residing or traveling in the Philippines. The evidence on record does not establish that the applicant's wife would be unable to find employment in the Philippines, or that naturalized U.S. citizens of Filipino origin run greater security risks than other native Filipinos. The evidence demonstrates that conditions in the Philippines may not be as favorable to the applicant's wife as in the United States, but this does not necessarily consitute extreme hardship. Nevertheless, the AAO points out that the applicant's wife is not required to relocate to the Philippines; to do so would be her choice.

The record does not establish extreme hardship to the applicant's spouse if she remains in the United States maintaining her employment and close proximity to other family members. There is no evidence that the applicant would be unable to contribute to the family's finances while he is in the Philippines. In addition, although the applicant's wife is likely to be faced with financial changes, there is no evidence that the applicant's absence would cause her to be unable to support herself and her children, or that she has no other source of income apart from the applicant. In her statement dated September 16, 2003, the applicant's wife expresses concern over a pain in her leg which she had experienced for approximately one year. She fears that she will become unable to work and will fall into extreme financial distress in the applicant's absence. There is no evidence on the record, however, regarding her medical problem or her prognosis or its impact on her employment. Moreover, 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.

The AAO recognizes that the applicant's wife will endure emotional distress as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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, 468 (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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.