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

invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H2

MAR 0 3 2005

[redacted]

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

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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. 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 inadmissible to the United States pursuant to § 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 beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and three children.

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, the applicant submits a letter signed by her husband in which he states that he will suffer extreme hardship if the applicant is removed.

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 admitted fraudulent use of a passport to procure admission into the United States in 1989. The applicant does not contest the district director's determination of inadmissibility.

Section 212(i) 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 or to her children is not a permissible consideration under the statute. A § 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 (BIA 1999). 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 § 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 and parents is the only qualifying relative under the statute, and the only relative for whom the hardship determination is permissible.

On appeal, the applicant's husband writes that the applicant is the only person who can care for their children, and that he will suffer if the applicant is removed. The hardship the applicant's husband faces upon her removal is not doubted or minimized. The record, however, when viewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above does not support a finding that the applicant's spouse faces extreme hardship if the applicant 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.

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.