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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: APR 01 2005

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 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, San Francisco. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States in 1993 through fraud involving the use of an assumed identity. The applicant subsequently married her U.S. citizen spouse on July 27, 1999, in Santa Rosa, California. The applicant's spouse then submitted a Petition for Alien Relative (Form I-130), on behalf of the applicant on July 17, 2000, which was approved on February 24, 2001. The applicant applied for adjustment of status pursuant to section 245 of the Act on April 28, 2001. During the course of the applicant's adjustment of status interview it became apparent that the applicant had entered the United States through fraud. The applicant, through counsel, submitted an Application for a Waiver of Grounds of Excludability (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to seek a waiver of the ground of inadmissibility and allow her to remain in the United States with her United States citizen spouse.

The district director issued a decision denying the waiver application on August 6, 2002, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case her U.S. citizen spouse. *Decision of the District Director,* dated August 6, 2002. Counsel submitted an appeal on September 6, 2002. The AAO dismissed the appeal on February 28, 2003. Counsel has now filed a Motion to Reopen/Reconsider with the AAO. Enclosed with the motion are additional documents consisting of a letter from the spouse's criminal attorney relating to the applicant's proposed release date in 2003, copies of money orders purportedly sent by the applicant to her spouse during his incarceration, and copies of advisory country report documents from the United States Department of State regarding the situation in the Philippines.

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:

> 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.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel bases his Motion to Reopen/Reconsider on the new evidence submitted, and asserts that the AAO erred in failing to find that the applicant had established extreme hardship. The motion references various cases in which counsel asserts that a finding of extreme hardship was made. According to counsel's motion, "[i]f we compare the above cases to this case, the OAA should have concluded that the hardships detailed by Applicant/Appellant's Spouse in his Hardship Declaration has [sic] met the "extreme hardship requirement to entitle Applicant to a waiver under § 212(i) of the Act." *See Counsel's Brief in Support of Motion to Reopen/Reconsider,* dated March 26, 2003. We will review counsel's arguments and will examine the additional evidence submitted on appeal.

In support of the motion, counsel has submitted several additional documents to support the claim that the applicant's U.S. citizen spouse will suffer extreme hardship. The first document is a letter dated March 19, 2003, from counsel for the applicant's spouse in the criminal matter that led to his incarceration. The letter states that counsel was advised by a state parole agent that the applicant was scheduled to be released from criminal custody on May 13, 2003. The second document consists of copies of money orders purchased by the applicant to be paid to her spouse at the San Quentin State Prison, between May of 2001 and October of 2002. The remaining documents consist of various State Department reports and cautions issued during 2003, regarding to the situation in the Philippines regarding possible anti-American violence following the military offensive in Iraq. Counsel asserts that this additional evidence provides additional evidence of the difficulty that the spouse would have living in the United States without the applicant, and also underscores the hardship that he would face if he left the United States to live in the Philippines with his wife.

While the motion is supported by additional evidence, the AAO does not find the evidence to be persuasive. The spouse may or may not have been released from prison on March 19, 2003. Presumably the letter was offered to demonstrate that he would soon be reunited with the applicant upon whom he would depend. Even assuming that he was released as stated, nothing has been submitted to the AAO to support the claim that he would be dependent upon the applicant upon his release from prison. The AAO notes that it did not find the previous assertions that the spouse was dependent upon the applicant to be particularly compelling.

First, the applicant's spouse has asserted that the applicant made sure that he took his medications while in prison. While she may have inquired about his medications, no evidence has been submitted to establish that

it was she, and not the prison officials themselves, that provided for the applicant's health care and ensured that he was taking any prescribed medications, which would seems to be a logical conclusion given her spouse's incarceration. Thus, while the applicant may have inquired about the spouse's health and offered encouragement and advice, it has not been shown that she is somehow responsible for having maintained his health during his imprisonment.

Second, an examination of the evidence in the record suggests that the spouse's health depends less on his family relationships than on his own ability to heed the advice of medical professionals to control his smoking and excessive drinking. The evidence originally submitted with the Form I-601 included various medical record notations made by the spouse's physician documenting the medical diagnoses and the medical advice and treatment offered. *See Application for Waiver of Grounds of Inadmissibility-Exhibit 3,* dated May 24, 2002. Those medical records reflect that the applicant was repeatedly counseled to stop smoking and consuming alcohol due to the detrimental effects upon his health. This advice appears to have been given to him both before and during the course of his marriage. The AAO notes, that to the extent that the applicant claims that his wife has been responsible for maintaining his health, that assertion is not supported by any evidence either from the spouse's medical providers, either those within or those outside of prison.[1]

The applicant has also submitted evidence regarding monetary remittances made by the applicant to her husband at the San Quentin prison. This evidence is offered to support the claim that the applicant's spouse depends upon her for financial support. In counsel's motion to reopen, he references the spouse's statement which states that he "depends on his wife...financially as his Social Security income is insufficient to pay for his legal defense bills and other expenses." *See Motion to Reopen/Reconsider,* at p.2. Counsel references the money orders sent by the applicant as evidence of the spouse's financial dependence upon the applicant. *Id,* at p.3. The AAO finds this evidence ambiguous and unpersuasive.

First, the only thing that this evidence demonstrates is that on several occasions while the spouse was incarcerated the applicant transmitted money orders for varying amounts of cash. The money orders simply reflect that the spouse transmitted money. She did not send him a check from an individual account she separately maintained. The money could have been the applicant's own money that he was unable to access from prison. While the spouse claims that he is financially dependent upon the applicant, the evidence in the record does not support this assertion. The record contains the Application for Adjustment of Status (Form I-485), which was filed on April 21, 2001, accompanied by evidence to demonstrate that the spouse would not be a public charge. The evidence consists of an Affidavit of Support (Form I-864) filed by the applicant's spouse on March 12, 2001. The affidavit indicated that the applicant's spouse's income in 2000 was $172,207.20. This income is evidenced by a copy of the couple's Individual Tax Return Form 1040 for the 2000 tax year. That return verified that his adjusted gross income was $172,207.20 resulting from the spouse's interest income and his pensions and annuities. This substantial amount of money refutes the claim by the spouse that he was "living on my Social Security income and little pension." *See Declaration of* [redacted] dated May 23, 2002. Although the applicant's spouse asserts in that statement that "he "almost went broke after the legal battle and after paying legal fees" the record reflects that the applicant listed his legal fees, for which he claimed a miscellaneous expense deduction, to be $55,000. While it is possible that his legal fees were more substantial, there is no evidence in the record to support a contention

[1] The AAO notes that the record is also devoid of any evidence in regard from the applicant herself. While the record contains a statement from the spouse, no corresponding sworn statement was offered by the applicant.

that he is unable to pay that and other bills, or the general assertion that he is now nearly broke.[2]

The couple's tax return, although a joint return, reflected no income earned by the couple other than that earned by the applicant's spouse through the annuities, pension, and interest income. Thus, there is no evidence that the applicant herself earns a separate income, let alone that her spouse is dependent upon her income.

Finally, the evidence accompanying the motion includes U.S. Department of State country reports and alerts regarding the situation in the Philippines. These are offered to support the assertion that it would be an extreme hardship for the applicant's spouse to return with her to the Philippines due to the increased danger of attacks against Americans in that country. While the reports do caution Americans regarding violence in the Philippines, it appears that the principal risks are associated with travel to outlying areas of the Philippines, and the advisals suggest that Americans take a number of precautions while living or traveling in the Philippines. Furthermore, it must be noted that as an American citizen, the applicant's spouse is free to remain in the United States and will not be forced to reside in the Philippines. Thus, to the extent that living in the Philippines has the potential of posing an extreme hardship for him, it is a hardship that he able to avoid.

The AAO acknowledges that the applicant's spouse may experience some emotional hardship on account of the separation from her spouse if he decides not to join her in the Philippines. It also appears that the spouse has demonstrated her devotion to her spouse despite his criminal history and her husband's deception toward her in regard to his criminal history. *See Letter from* [redacted] dated September 5, 2002. However, no specific evidence of the effect, if any, that the applicant's spouse may have upon his recovery has been offered. Consequently, the evidence of hardship to the spouse supports only a general finding of hardship similar to that experienced by individuals who must live apart.

Aside from offering the additional evidence previously described, counsel also asserts that the AAO should reconsider its decision because the indicators of hardship in the applicant's case are as compelling as the hardship considered Board of Immigration Appeals (BIA), in recent years, and found to constitute extreme hardship. The principal case cited by counsel is *In re Recinas,* 23 I&N Dec. 467 (BIA 2002). However, the facts in that case, even as related by counsel, are quite distinguishable from the facts in the instant case. According to the BIA in *Recinas,* extreme hardship was found to exist where: 1) the applicant was the "sole provider of financial and familial support for six children; there was a "lack of any family in the country" to which the respondent was to be returned; the children lacked any familiarity with the Spanish language; and there was the unavailability of an alterative means of immigrating to the United States. However, the facts in the instant case are quite distinguishable. First, there is no evidence that the applicant contributes any financial support to the family, let alone that she is the sole financial support. Second, to the extent that the Recinas court was concerned about the financial and other impact upon an extended family including minor children, the record in the instant case does not indicate that the couple has any dependent qualifying children—or even other family members, who rely upon the applicant for support, or who would be adversely affected by the denial of the waiver. Therefore, the AAO

[2] While the applicant's spouse claims that he was forced to sell his home in Sebastopol to cover legal fees, and was forced to purchase a mobile home, the record only contains evidence of a mobile home purchase. It does not contain any evidence of the spouse's legal fees, or evidence of the applicant's payment of such fees, or evidence of the sale of the beneficiary's home, which he claims was necessary to pay those fees.

finds that the applicant's situation bears little relationship to that considered by the BIA in *Recinas*. The same can be said of the remaining cases referenced by the applicant's counsel. All of those cases involved situations of very lengthy residence in the United States by qualifying family members, significant adverse impact upon minor children, or cases involving unique medical conditions of family members. *See Counsel's Motion to Reopen, at pp. 7-10.* In contrast, the applicant's case demonstrates more commonly encountered hardships.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See* [redacted] *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. [redacted] *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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, it appears that the family unit is experiencing the normal results of deportation, and that the resulting hardship does not rise to the level of extreme hardship.

A review of the documentation submitted in support of the Motion to Reopen/Reconsider fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States based on the evidence in the record including the additional evidence offered with the motion. In addition, counsel has been unable to demonstrate any errors of law relating to the previous decisions in this case.

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. *See* 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 previous decisions of the district director and the AAO are affirmed.