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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: SAN FRANCISCO, CA Date: AUG 05 2005

IN RE: [redacted]

APPLICATION: 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 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, 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 Philippines who was found to be inadmissible to the United States pursuant to section 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 admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. Citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse who petitioned for her in this case.

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. *Decision of the District Director,* dated November 7, 2003.

On appeal, counsel asserts that the district director abused his discretion in not granting the waiver, that the applicant's spouse did not know of the applicant's fraud, and that the statements regarding the medical letter were illogical and failed to follow legal procedure. *See Form I-290B*, dated December 9, 2003.

In support of these assertions, counsel submits a brief, dated January 7, 2004, a doctor's letter, medical records, evidence of age discrimination and the 2002 Department of State Country Reports from the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States Government with a fraudulent name and passport on or about January 1998. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals 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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under this case is appropriate for the applicant's spouse. The record indicates that the applicant's spouse has five U.S. citizen brothers who are in the United States. *See Statement of Norbert Rothenberg*, at 1, dated November 14, 2001. The record indicates that the applicant's spouse does not have any known relatives in the Philippines. *Id.* The record includes the 2002 Department of State Country Reports for the Philippines. The report details various problems in the Philippines including poverty, human rights abuses and trafficking.

In regard to the financial impact of departure, the applicant states that he has approximately $25,000 in financial obligations between credit cards and car payments, but counsel has submitted credit card bills amounting to less than $2,000. The applicant's spouse states that his wife's family in the Philippines has very limited resources and is financially struggling. *Id.* The record includes an internet posting with examples of job advertisements that purportedly discriminate against applicants based on age. The applicant's spouse is currently working as a Safety and Security Officer. *Id.* The evidence presented does not reflect that the applicant's spouse would be discriminated against in his particular field. The applicant's spouse states that if he obtained employment, it would likely be in a nonprofessional position with pay of $200 or $300 a month. *Id.* at 2. The 2002 Department of State Country Reports for the Philippines states that foreign workers may not engage in certain occupations, but typically their work conditions are better than those faced by citizens.

The applicant's spouse suffers from thyrotoxicosis, bladder dysfunction, hypercholesterolemia, prostate hypertrophy, hypertensive atherosclerotic vascular disease and essential hypertension. *Physician's Letter*, dated November 8, 2001. Counsel has submitted medical records for the applicant's spouse which indicate health problems. The applicant's spouse currently has medical insurance through his employer and counsel asserts that the extent of the health problems of the applicant's spouse and the unavailability or prohibitive cost of the treatment in the Philippines would place the life of the applicant's spouse at risk. *Brief in Support of Appeal*, at 2, dated January 7, 2004. There is no evidence that the applicant cannot receive treatment in the Philippines and no evidence of the cost of such treatment in the Philippines has been presented.

Counsel asserts that the district director found that there is no doubt that if he (referring to the U.S. citizen husband) returned to the Philippines, he would suffer extreme physical discomfort and possible death. *See Form I-290B*. Counsel then states that the applicant's spouse was faulted by the district director for marrying a person with immigration problems. *Id.* Upon a review of the district director's decision, it appears that he is summarizing the applicant's spouse's statement by stating that there is no doubt that if he (referring to the U.S. citizen husband) returned to the Philippines, he would suffer extreme physical discomfort and possible death. This does not appear to be the contention of the district director. Furthermore, the district director summarizes the applicant's spouse's statement when mentioning that the applicant's spouse knew of the applicant's unlawful immigration history. The district director does not state or imply that the applicant's spouse should have married somebody with a better immigration history as counsel contends. *Id.* Counsel

further asserts that there is no evidence to show that the applicant's spouse was aware of his wife's fraud or that it would cause a denial of her case. *Id.* However, the applicant's spouse states that he was quite aware of his wife's immigration status and the fraud she committed when entering the United States. *Statement of Norbert Rothenberg*, at 2.

Counsel questions the logic of the district director in stating that no supporting evidence was submitted with the physician's letter as the district director conceded to the extreme physical discomfort of the applicant's spouse. *Form I-290B.* The AAO notes that, as previously mentioned, the district director was merely summarizing the applicant's spouse's statement when mentioning extreme physical discomfort. Counsel asserts that evidence should not be rejected on credibility grounds without a clear explanation stating specific reasons for such a rejection. *Id.* The district director does not reject the physician's letter, but he notes that the applicant did not produce any additional information regarding medical history or treatment. The AAO notes that the physician's letter fails to state that the condition of the applicant's spouse will worsen if he is separated from the applicant.

The record indicates that the applicant's spouse will face many difficulties if he resides in the Philippines. However, based on the evidence presented, extreme hardship has not been shown in the event that the applicant's spouse relocates to the Philippines. In addition, the record does not show that the applicant's spouse will suffer extreme hardship in the event that he remains in the United States and has access to his current employment and health care.

Counsel contends that the district director's assertion that there is no requirement for the applicant's spouse to leave the United States is inconsistent with current case law. *Brief in Support of Appeal*, at 2. 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.

Moreover, the AAO notes that 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 spouse will endure hardship as a result of separation from the applicant and is sympathetic to his situation. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that 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 she merits a waiver as a matter of discretion.

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 appeal is dismissed.