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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MANILA PHILIPPINES Date: DEC 14 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 Acting Immigration Attaché, Manila, Philippines, 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 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 seeking to procure 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 acting immigration attaché concluded that the applicant 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 Acting Immigration Attaché*, dated June 21, 2004.

On appeal, counsel asserts that the applicant's spouse is suffering extreme hardship as a result of his wife's absence and will continue to suffer extreme hardship if his wife is not admitted. *Brief in Support of Appeal*, dated July 16, 2004.

In support of these assertions, counsel submits the aforementioned brief, a psychological evaluation and doctor's letter for the applicant's spouse, affidavit from the applicant's spouse and country information on the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States with a fraudulent visitor visa on May 29, 1998. The applicant was processed for expedited removal and departed on May 30, 1998. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident

spouse or parent of the applicant. 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 (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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to the Philippines or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to the Philippines. Counsel asserts that the applicant's spouse has resided in the United States for more than twenty years and if the applicant's spouse relocated to the Philippines, he would suffer financially as he would be required to leave his job of twenty years. *Brief in Support of Appeal*, at 7. However, there is no indication that the applicant's spouse cannot obtain employment in the Philippines. Counsel cites the U.S. Department of State Consular Information Sheet for the Philippines which details terrorist threats to U.S. citizens. *Id.* The applicant's spouse is a native of the Philippines, therefore, he would not easily be identifiable as a U.S. citizen. In regard to the applicant's spouse's high blood pressure and gout, there is no indication that he cannot obtain medication in the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel asserts that the applicant's spouse is distressed at the prospect of having his daughter choose between living with him or the applicant. *Brief in Support of Appeal*, at 4. Counsel states that the applicant's spouse is unable to sleep and has high blood pressure and gout which require taking medication. *Id.* The record includes a psychological evaluation which states that the applicant's spouse has an adjustment disorder with depressed mood. *Psychological Evaluation*, at 3, dated May 23, 2003. Counsel states that the acting immigration attaché casually mentioned this report and that not enough importance was given as a clinical psychologist is trained to recognize hardships affecting one's well-being. *Brief in Support of Appeal*, at 6. The AAO acknowledges the important role of a clinical psychologist, however, it gives little weight to the submitted report as it is based on a one-time meeting and there is no mention of a follow-up appointment, proposed therapy or treatment for the applicant's spouse. The report submitted on appeal is the same report submitted with the initial I-601 application a year earlier. The lack of more current information diminishes its importance. The record includes a doctor's letter which states that the applicant's spouse has high blood pressure and gout and is taking medication which may cause side effects. *Doctor's Letter*, dated July 15, 2004. However, these problems do not appear to be related to separation as the record indicates that the applicant's spouse has had gout for the last twelve years and high

blood pressure for several years. *Psychological Evaluation*, at 2. The letter states that the applicant's spouse is at risk for developing heart disease, renal disease and heart failure. *Id.* The letter is not clear as to whether the potential medical problems are related to separation from the applicant.

After a thorough review of the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse relocates to the Philippines or in the event that he remains in the United States.

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.