U.S. Department of Homeland Security
20 Mass, Rm. 3000,
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 19 2006

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 APPLICATION:

[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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and it 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. She 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.

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 October 5, 2004.

The record reflects that, on November 13, 1996, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved immigrant worker petition. On November 13, 1996, the applicant filed the Form I-601 because she had procured admission to the United States by presenting a Philippine passport under a different name in 1991. The Form I-485 based on the approved immigrant worker petition was denied. On March 28, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse.

On appeal, counsel contends that the applicant's spouse would suffer hardship upon her removal from the United States. *Applicant's Brief*, dated November 24, 2004. In support of this assertion, counsel submitted the above-referenced brief, medical documentation for the applicant's spouse and an affidavit written by the applicant on behalf of her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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.

The district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted use of a fraudulent passport to procure admission into the United States in 1991. Counsel does not contest the district director's determination of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (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.

Hardship to the alien herself is not a permissible consideration under the statute. A section 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 at 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 record reflects that the applicant married her spouse, (Mr. [redacted] on August 18, 1996. Mr. [redacted] is a native of the Philippines who became a naturalized U.S. citizen in 1993. The record reflects further that the applicant is in her 60's, Mr. [redacted] is in his 80's, and Mr. [redacted] has some health concerns.

Counsel contends that Mr. [redacted] would suffer extreme hardship if he were to remain in the United States without the applicant. Counsel asserts that Mr. [redacted] would be left alone to fend for himself and would suffer physical, emotional and psychological hardship because he would have no one to turn to in a situation in which immediate assistance was required. The affidavit written by the applicant claiming to relay Mr.

concerns states "without my wife I will suffer difficulties because of my health. I'm suffering diabetes, asthma and arthritis. I can't even tend for my proper hygiene. In truth I'm using diapers for incontinent (sic). I really need personal care that only my wife could give . . . I have a poor vision . . . without her I can't go nowhere."

The record indicates that, since 1992, Mr. [redacted] has received social security benefits but it contains no evidence of the income generated by Mr. [redacted] or the costs associated with the household. While it is unfortunate that M may have to lower his standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

A medical certificate, dated 2000, indicates that Mr. [redacted] has been treated for diabetes, hypertension, asthma, arthritis, chronic obstructive pulmonary disease and atrial fibrillation. Other medical documentation in the record indicates that the chronic obstructive pulmonary disease and atrial fibrillation were resolved with the insertion of a pacemaker in 2002. The medical documentation also indicates that Mr. [redacted] was admitted to the hospital for one day in 2002 for abdominal pain that was not an obstruction but possibly a small infiltration at the base of the lungs and was admitted to the hospital for five days in 2003 for treatment of pneumonia. The medical documentation in the record indicates that, in 2003, Mr. [redacted] was "well-built, well-nourished, in no acute distress" and that his medical conditions were stable. There is no evidence in the record to indicate what is Mr. [redacted] current diagnosis or prognosis or whether he requires the assistance of the applicant in order to perform daily activities. As such, there is no evidence in the record to suggest that Mr. [redacted] suffers from a physical or mental illness that would cause him to suffer physical or emotional hardship beyond that commonly suffered by aliens and families upon deportation.

The applicant, in her affidavit, asserts that Mr. [redacted] would face extreme hardship if he relocated to the Philippines in order to remain with the applicant because they will be forced to relocate and readjust themselves into a society that has drastically changed since she left in 1991 and their chances of survival would be slim. As discussed above, there is no evidence in the record to suggest that Mr [redacted] suffers from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation or that he would be unable to receive sufficient treatment in the Philippines. There is no evidence in the record to suggest that the applicant or Mr. [redacted] would have any financial issues in the Philippines. The record also reflects that the applicant has family members in the Philippines, such as her grown children, who may be able to provide the applicant and Mr. [redacted] with financial and emotional support. While the hardships Mr. [redacted] faces are unfortunate, the hardships faced by him with regard to adjusting to a lower standard of living and separation from friends and family, are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Finally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Mr. [redacted] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in

common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an 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.