U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: MAR 29 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Los Angeles, 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 the Philippines who was found to be inadmissible to the United States under § 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 admittance into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

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. On appeal, counsel contends that district director failed to consider all the factors concerning the hardship the applicant's husband would suffer should she be removed. Counsel asserts that the evidence establishes extreme hardship to the applicant's spouse. The AAO has reviewed and considered the entire record in rendering this decision and concurs with the district director's finding in this matter.

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.

The record reflects that the applicant was admitted to the United States in 1991 upon presenting a passport with a nonimmigrant visa in another person's name. She is therefore inadmissible pursuant to § 212(a)(6)(C) of the Act.. The waiver of inadmissibility available under § 212(i) of the Act depends first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship to the alien herself or her children is irrelevant to § 212(i) waiver proceedings. In the case at hand, the only relevant hardship would be that suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These factors include the presence of an LPR 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines to remain with the applicant, because "his entire immediate family" resides in the United States. Counsel specifically mentions the applicant's husband's mother, who lives in the applicant's home, his two sisters, his grown stepchildren, and his young children. The applicant helps care for her elderly mother in law, who in turn, watches the applicant's children when necessary. The applicant's husband wrote in his 2001 statement that he has a very close relationship with his family, and that he sees his sisters once a month. Nevertheless, the record does not contain sufficient information to lead to a conclusion that the applicant's separation from his family in the United States would occasion him greater hardship than that which usually occurs in similar situations.

Counsel maintains that the applicant's standard of living would decrease dramatically in the Philippines, since both the applicant and her husband would have great difficulty in finding work in the Philippines. There is no documentation on the record in support of claims that the applicant's husband would be unable to find suitable employment in his native Philippines. Counsel also states that as a U.S. citizen, the applicant's husband would face terrorism in the Philippines. A 2004 Consular Information Sheet on the Philippines recommends that U.S. citizens exercise great caution in the Philippines, particularly in certain regions. There is no documentation, however, to establish that the applicant, a native-born Filipino, runs a risk of harm at the hands of terrorists greater than that which other native-born Filipinos face. The AAO is unable to conclude that the applicant's husband would suffer extreme hardship should he choose to relocate to the Philippines.

Counsel also asserts that the applicant's husband would experience extreme hardship should he remain in the United States without the applicant. Despite his emphasis on his deep familial ties in the United States, the applicant's husband stated that without the applicant, he would have no one to help care for his mother and children. The record contains no evidence that the applicant is the only person available to assist her husband with such responsibilities. Counsel also contends that the applicant's husband would be unable to provide for two households if the applicant is removed, and that such a situation would cause him extreme financial hardship. The record does not include documentation establishing that the applicant's husband would be unable to make the necessary adjustments in lifestyle and finances required to cope with the applicant's removal.

On appeal, counsel submits a psychiatric evaluation of the applicant's husband prepared on September 1, 2004 by [redacted], [redacted] based his evaluation on a single interview with the applicant's husband. [redacted] states that the applicant's husband currently suffers from anxiety and depression due to his worrying about the applicant's immigration problems. [redacted] states that the applicant's husband's depression would worsen should the applicant be removed. There is no recommendation that the applicant's husband pursue medical or psychological therapy for depression. The evaluation does not indicate that the applicant's husband would be incapacitated, unable to care for his children, or would be otherwise so emotionally compromised as to require medical treatment.

The AAO acknowledges that the applicant and his spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility. However, the applicant's husband's situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. 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. Also, 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 record fails to establish that the applicant's spouse would suffer extreme hardship on account of 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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.