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U.S. Citizenship
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HL

FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 10 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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. He 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 his 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 16, 2004.

The record reflects that, on August 2, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office on April 25, 2001. The applicant testified that, on July 12, 1992, he entered the United States by presenting a Philippine passport that belonged to another.

On April 25, 2001, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

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.

- (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.

The district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted fraudulent use of a passport belonging to another to procure admission into the United States in 1992. The applicant does not contest the district director's determination of inadmissibility.

On appeal, the applicant contends that the district director erred in finding that the applicant's spouse would not experience extreme hardship upon the applicant's removal from the United States. *See Form I-290B*, dated October 18, 2004. To support his appeal the applicant submitted the Form I-290B and copies of medical documentation for his son. The entire record was reviewed and considered in rendering a decision on the appeal.

Hardship to the alien himself 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. *Supra.* 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, on September 5, 1998, the applicant married his wife, [REDACTED], who is a U.S. citizen by birth. The applicant and his spouse have a seven-year old son who is a U.S. citizen by birth. The applicant's son has muscular deficiencies and congenital myopathies and scoliosis. The record reflects further that the applicant is in his 30's, [REDACTED] is in her 40's and [REDACTED] does not have any health concerns

The applicant asserts that his son would suffer extreme hardship if the applicant were removed from the United States. The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), removed hardship to an alien's children as a factor in assessing hardship waivers.

It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen son will not be considered in this decision.

The applicant contends that his spouse would suffer extreme hardship if he were removed from the United States. [REDACTED] in her affidavit, states "it would be a hardship on [her] part taking care of [their] . . . son who was diagnosed with congenital scoliosis. He needs constant care and attention as he is physically incapacitated." [REDACTED] goes on to indicate that, "with enormous medical bills and without the help of [her] husband, it would be impossible for [her] to take care of [her] son financially and physically." Medical documentation establishes that the applicant's son is currently treated for "muscular deficiencies, congenital myopathies and scoliosis. . . [and] is in need of full time care." See *Medical Statement*, dated October 14, 2004. However, there is no evidence in the record to suggest that any of the costs associated with the treatment of the applicant's son is not covered by medical insurance or that [REDACTED] is unable to obtain such medical insurance through her employment. Additionally, the record indicates that, in 2001, the applicant's son was accepted as a patient at the Shriner's Children's Hospital in Northern California, through which he would receive free inpatient care, including therapy, surgery and any required medical equipment. *Shriners of North America*, www.shrinershq.org/index.html. The record indicates that [REDACTED], as well as the applicant, have been employed on a full-time basis since the birth of the applicant's child. This indicates that the applicant's son may already have full time care during the periods in which the applicant and [REDACTED] are absent from the home due to work commitments. The record contains no evidence as to the costs, if any, associated with the care of the applicant's son in the absence of [REDACTED] during her work hours. Financial records indicate that [REDACTED] has contributed substantially to the couple's household income over the years, averaging 44%, or approximately \$19,871. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support the family without the additional income provided by the applicant, approximately \$25,337. There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, [REDACTED] has family members in the immediate vicinity who may support her emotionally and financially in the absence of the applicant.

[REDACTED] does not assert in her affidavit that she would accompany her husband to the Philippines. The AAO is, therefore, unable to find that [REDACTED] would experience hardship should she choose to join her husband in the Philippines. Additionally, 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 [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 his 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 he 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 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.