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

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: MAY 17 2006

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:

[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, San Francisco, 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 May 10, 2004.

The record reflects that, on June 11, 1999, the applicant was admitted to the United States after he presented a Philippine passport with a U.S. nonimmigrant visa that were both issued under the name [redacted] On August 25, 2001, the applicant married his U.S. citizen wife, [redacted] On February 13, 2002, 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 September 12, 2002, the applicant filed the Form I-601. The record shows that the applicant appeared at CIS' San Francisco District Office on October 9, 2002. The applicant admitted that he had procured admission into the United States by fraud or willful misrepresentation of a material fact in 1999.

On August 26, 2003, the district director issued a notice to the applicant informing him of the need to file documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On May 10, 2004, the district director issued a notice of denial of the application because the applicant had procured admission to the United States by fraud or willful misrepresentation of a material fact, had failed to respond to the request for documentation to support his claim that denial of the waiver would result in extreme hardship to his family members and had therefore failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel contends that the district director erred in finding the applicant had failed to provide documentation to support his claim that denial of the waiver would result in extreme hardship to his family members. *See Applicant's Brief* dated June 8, 2004. In support of the appeal, counsel submitted the above-referenced brief and copies of an affidavit from the applicant's spouse, an affidavit from the applicant's spouses' daughter, letters of recommendation for the applicant and documentation to prove the applicant forwarded the originals of these documents to the district director in a timely fashion. 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.

(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)(i) of the Act on the applicant's admission to procuring admission into the United States by fraud in 1999. Counsel does not contest the district director's determination of inadmissibility.

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. *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 [redacted] is a native of the Philippines who has been a lawful permanent resident of the United States since 1991 and a naturalized U.S. citizen since 1999. [redacted] has a 14-year-old daughter who is a U.S. citizen by birth. The record reflects further that the applicant and [redacted] are in their 50's, and [redacted] and her daughter do not have any health concerns.

and her daughter, in their affidavits, assert that [redacted] daughter would suffer extreme hardship if she were to remain in the United States without the applicant or if she were to return to the Philippines with the applicant. However, 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 under section 212(i) of the Act. 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 stepdaughter will not be considered in this decision.

[redacted] in her affidavit, asserts that she would suffer financial and emotional hardship if she were to remain in the United States without the applicant. [redacted] states that "[her] job . . . has been very demanding in time . . . [her] absence was well filled up by [the applicant] as he takes [her] daughter to and from school and her extra-curricular activities . . . [her salary] is also not enough to pay for [their] house and mortgage and expenses for daily subsistence . . . [the applicant] has been [their] moral, financial and spiritual lift in keeping [their] family solidarity." The record reflects that and her daughter have resided at the same address since 1997 and that [redacted] was the only source of income for her and her daughter from the time they moved to their current residence until the applicant started to contribute to the household income in 2002. Financial records indicate that [redacted] is the primary source of financial support for the family and that the applicant has worked outside the home since 2002. During their first year of marriage, in 2001, [redacted] contributed 100% or approximately $44,863 to the household income. The record shows that, even without assistance from the applicant, [redacted] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. The record does not support a finding of financial loss that would result in an extreme hardship to [redacted] if she had to support her and her daughter without the additional income provided by the applicant, approximately $15,340. While it is unfortunate that [redacted] would essentially become a single parent again and professional childcare may be expensive and may not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that, since 2002, the applicant has worked away from the home, indicating that [redacted] daughter may already have alternative care during the periods in which the applicant and [redacted] are absent from the home due to work commitments. [redacted] does not assert, and there is no evidence in the record to suggest, that she 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.

[redacted] in her affidavit, asserts that she and her daughter would suffer extreme hardship if they were to return to the Philippines with the applicant. [redacted] states that she has "no place to live in the Philippines . . . [her] daughter could hardly understand and speak the Philippine language and culture." As

discussed above, the hardship to [redacted]s daughter will not be considered in this decision, except as it affects [redacted]There is no evidence in the record that the applicant or [redacted]would be unable to obtain employment in the Philippines sufficient to support the family or that [redacted]suffers from a mental or physical illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. The record reflects that the applicant has family members in the Philippines who may be able to provide financial and emotional assistance. 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 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.