U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

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FILE: [redacted] Office: SAN FRANCISCO, CA Date: SEP 08 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 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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, 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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a naturalized U.S. citizen and has a lawful permanent resident mother. The applicant 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 and mother.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated May 24, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of fact and law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated June 28, 2004.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement by the applicant's spouse; a letter written by [redacted], dated April 5, 2004; medical test reports for the applicant's spouse, dated March 9, 2004; country condition report, The Official Government Portal of the Republic of the Philippines, www.gov.ph; a copy of the applicant's mother's resident alien card; a copy of the applicant's Philippine birth certificate; copies of the false Form I-94 card, passport, and visa used by the applicant; a copy of the applicant's Philippine passport; tax statements for the applicant's spouse; an employment letter for the applicant's spouse, dated January 20, 2004; an employment letter for the applicant's spouse, dated December 18, 2002; a copy of the applicant's spouse's U.S. passport; a copy of the marriage certificate, dated October 19, 2002; and bank statements for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

Before addressing whether the applicant qualifies for a waiver of inadmissibility, it is necessary to address the District Director's findings of inadmissibility. The AAO notes that the District Director erred in finding the applicant inadmissible under Section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

> (II) has been unlawfully present in the United States for **one year or more,** and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Although the applicant has been unlawfully present in the United States for one year or more, there is nothing in the record to show that she has departed or been removed from the United States. The applicant therefore is not inadmissible under Section 212(a)(9)(B)(i)(II) of the Act.

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 admitted in her adjustment of status interview to using a Philippine passport and B-2 visa with false names to gain admission into the United States on August 27, 1999 at San Francisco, California. *Form I-485; See Also Philippine passport, U.S. visa, and Form I-94 card using false names.*

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen husband and her lawful permanent resident mother if the applicant is removed. If 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 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 a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that he or she resides in the Philippines or the United States, as he or she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to the Philippines, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse has lived in the United States since 1979. *Statement by the applicant's spouse.* He has eight siblings who are U.S. citizens and live in the United States. *Id.* The applicant's spouse's only immediate relative in the Philippines is his sister. *Id.* The applicant's spouse sends money to his sister in the Philippines who is unemployed. *Id.* The applicant's spouse suffers from medical disorders known as mixed hypercholesterolemia and thyromegaly. *Letter written by* [redacted] *M.D., dated April 5, 2004.* His medical conditions require treatment with diet, exercise, and cholesterol lowering agents for his lifetime. *Id.* Frequent monitoring and adjustments to his medication by his physician will be necessary to slow the progression of the co-morbid disease states that accompany high cholesterol. *Id.* Regarding his condition of thyromegaly, additional tests are needed in order to determine future treatment. *Id.* The AAO notes that the record does not include any documentation pertaining to these additional tests. While the AAO acknowledges the inconvenience of these health conditions, it notes that the applicant's spouse's injuries are non-life threatening and he is still able to work and function. The applicant's spouse stated that unemployment is very high in the Philippines, age discrimination is widespread, and that he would not be able to sustain himself without employment. *Statement by the applicant's spouse.* The AAO acknowledges the applicant's submission of a country condition report demonstrating that three job postings in the Philippines have age requirements. *See www.gov.ph, The Official Government Portal of the Republic of the Philippines.* The AAO does not find; however, that the record demonstrates that the applicant's spouse would be unable to sustain himself and contribute to his family's financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The record does not state what hardship, if any, the applicant's spouse would suffer if he remained in the United States. The applicant's spouse stated that if the applicant were forced to return to the Philippines, he would have no choice other than to return with her. *Statement by the applicant's spouse.* 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. The AAO recognizes that the

applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. The AAO notes that the applicant's spouse's semi-monthly salary is $1230.53. *See employment letter for the applicant's spouse, dated January 20, 2004.* Although there may be a financial strain with the applicant's departure, there is nothing in the record that shows the applicant would be unable to contribute to her family's financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the United States.

If the applicant's lawful permanent resident mother travels with the applicant to the Philippines or resides with her in the United States, the applicant needs to establish that her mother will suffer extreme hardship. The record does not address what hardship, if any, the applicant's mother would suffer if she resided in the Philippines or in the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her mother if she were to reside in the Philippines or 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(a)(6)(C) 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.