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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: FEB 13 2007

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.

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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a derivative U.S. citizen and the step-mother of three lawful permanent resident children. 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 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 27, 2005.

The record reflects that, on January 27, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. On May 22, 2000, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California, District Office. The applicant testified that, in 1991, she procured admission to the United States by presenting a false passport under the name "[redacted]." On October 26, 2000, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director failed to consider updated documentation in regard to the applicant's spouse's medical conditions which established he would suffer extreme hardship. *See Applicant's Brief,* dated February 28, 2005. In support of his contentions, counsel submitted the referenced brief, an updated affidavit from the applicant's spouse, country conditions reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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 obtaining entry into the United States by fraud in 1991. On appeal, counsel does not contest the district director's determination of inadmissibility.

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. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's spouse's lawful permanent resident children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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, 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, on September 10, 1996, the applicant married her spouse, [redacted] (Mr. [redacted]. Mr. [redacted] is a native of the Philippines who became a derivative U.S. citizen in 1994. The applicant and Mr. [redacted] do not have any children. Mr. [redacted] has a 17-year old son, a 15-year old son and a 13-year old daughter from a prior relationship. Mr. [redacted] children are native and citizens of the Philippines who became lawful permanent residents in 2003, 1998 and 2001, respectively. The record

indicates that the applicant is in her 50's, Mr. [redacted] is in his 40's, and Mr. [redacted] may have some health concerns.

Counsel contends that the most important factor in determining extreme hardship is separation from family. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), The Ninth Circuit Court of Appeals (the Ninth Circuit) held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute "extreme hardship."

Counsel contends that Mr. [redacted] is suffering from medical conditions which have deteriorated to the point where he has had to leave his full-time job of six years. Counsel asserts that Mr. [redacted] suffers from severe depression, anxiety attacks and hypertension which have left him unable to continue working full-time. Counsel asserts that the applicant is the sole breadwinner and Mr. [redacted] is not currently physically, mentally and emotionally stable enough to shoulder sole responsibility for the care of his children. Mr. [redacted] in his affidavits, asserts that he suffers from anxiety attacks and severe depression and that he has deteriorated to the point where he had to resign his full-time job in favor of part-time work on weekends because he cannot handle too much stress. He states that the applicant is the sole breadwinner and has helped to alleviate the stress and helplessness that he feels. Mr. [redacted] states he has been diagnosed as clinically depressed and he does not know how he will survive without the applicant because he currently suffers from anxiety attacks which require his wife to come home from work to take care of him. He states that he has an emotional inability to travel without the applicant, which has prevented him from traveling outside the United States because the applicant does not have a green card. Mr. [redacted] states that he is suffering from high blood pressure and needs to monitor his cholesterol, for which the applicant oversees his diet. He states that his mental illness will be aggravated if he is without the applicant. Mr. [redacted] states that he needs the applicant to care for his children because she attends to their needs due to his health condition.

Medical documentation indicates that, in 2000, Mr. [redacted] was under a doctor's care for severe reflux esophagitis. Medical documentation indicates that, in 2004, Mr. [redacted] medical problems included anxiety, hyperlipidemia and hypertension, for which he was prescribed Atenol, Famotidine, Prozac, Lovastatin and Temazepam. While the medical documentation indicates that Mr. [redacted] has some medical problems for which he is prescribed medication, the documentation does not provide information in regard to the effect of these conditions on Mr. [redacted] ability to perform his responsibilities, whether he requires long-term medical care or what the prognosis is for his conditions. Further, the applicant's statement that he

has been diagnosed with clinical depression is not supported by the record. Neither is there evidence to establish that the applicant has resigned his full-time employment as a result of his health. The medical evidence does not indicate that Mr. [redacted]'s illnesses are related to the applicant's immigration situation or that his treatment requires the presence of the applicant or that he would be unable to provide himself with appropriate dietary and medical needs in the absence of the applicant.

Financial records report that, in 2004, Mr. [redacted] earned approximately $18,037. While the medical documentation indicates that Mr. [redacted] suffers from some health conditions, it does not, as previously noted, establish that Mr. [redacted] is unable to perform his work duties or daily activities due to his medical conditions or that the applicant's absence would result in Mr. [redacted] inability to function on a daily basis. Although it is unfortunate that Mr. [redacted] would essentially become a single parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. While Mr. [redacted] may have to lower his standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Mr. [redacted] if he had to support himself and his children without additional income from the applicant, even when combined with the emotional hardship described below.

As discussed above, there is no evidence in the record to confirm that Mr. [redacted] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. It is unfortunate that Mr. [redacted] will be separated from the applicant and he will witness his children's separation from the applicant. However, once again these are not hardships that are beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that Mr. [redacted] has family members, such as his father, in the United States who may be able to assist him physically, financially and emotionally in the absence of the applicant.

Counsel asserts that Mr. [redacted] would suffer extreme hardship if he accompanied the applicant to the Philippines because both he and the applicant would find it difficult to find employment comparable to the employment they hold or have held in the United States and, while medications are available in the Philippines, there is a remote possibility that Mr. [redacted] would not be able to afford them. Mr. [redacted], in his affidavit, states that he cannot start his life all over again in the Philippines because he is in his 40's, is clinically depressed and will suffer poverty. He states that, with his current mental condition he would be unable to afford to see any doctor in the Philippines or would not receive the same quality of care he receives in the United States. Mr. [redacted] states he is concerned that his children will not receive the same quality of education that they would receive in the United States.

Having analyzed the hardships Mr. [redacted] and his counsel claim he would suffer if he were to accompany the applicant to the Philippines, the AAO finds that they do not constitute extreme hardship. Counsel asserts that Mr. [redacted] and the applicant would not be able to find employment in the Philippines that was comparable to their employment in the United States. Counsel states that 46% of the population in the Philippines lives on $2 per day or less and asserts that, due to their age and education, the applicant and Mr. [redacted] would fall within this 46%. However, there is no evidence in the record to establish what the characteristics of the 46% of the population are, or whether the applicant and Mr. [redacted] meet these characteristics. Economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir.1986). Counsel and Mr. [redacted] admit that Mr. [redacted] does not suffer from a physical or mental condition that could not be treated in the Philippines. Rather, they assert that

he would be unable to afford the quality medical care and the medications used to treat his illnesses. However, the record contains no evidence concerning the cost of relevant medical treatment in the Philippines to support this claim. While the hardships that would be faced by Mr. [redacted] with regard to readjusting to the Philippine culture, economy and environment; separation from friends and family; a potentially reduced quality of health care; and his children's inability to obtain an education comparable to the education they would receive in the United States are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Additionally, the AAO notes that, as a U.S. citizen and lawful permanent residents, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Mr. [redacted] would not experience extreme hardship if he remained in the United States without the applicant.

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 the unfortunate, but expected disruptions, inconveniences, and difficulties that arise 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 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.