U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: MAR 08 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 waiver application was denied by the District Director, Los Angeles (Santa Ana), 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 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 into the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and his parents are lawful permanent residents. 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 family.

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 July 20, 2005.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship if the applicant is not permitted to remain in the United States. *Form I-290B*, received August 11, 2005.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, a psychological evaluation of the applicant's spouse, medical records for the applicant's father, and photographs of the applicant's family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant received a C1/D visa on December 1, 1995 and he entered the United States as a C1 nonimmigrant on December 16, 1995. The applicant's visa reflects that his purported intention upon seeking admission was to join the vessel MV Viking Princess. However, the applicant did not board the ship during his 29 day period of authorized stay or thereafter. As a result of misrepresenting his intention while seeking admission, the applicant is inadmissible under section 212(a)(6)(C)(i) 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.

Counsel asserts that that the applicant intended to join the ship when he came to the United States, but circumstances arising after his arrival caused a change in plans. *Brief in Support of Appeal*, at 2, dated September 7, 2005. The Department of State Foreign Affairs Manual (FAM) states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants...fail to maintain their nonimmigrant status..." *DOS Foreign Affairs Manual,* § 40.63 N4.7(a)(2). Although the AAO is not bound by the FAM, it finds the Department of State's analysis in this situation to be analogous and persuasive.

The FAM states, "If an alien violates his or her nonimmigrant status by adjusting status or by seeking unauthorized employment within 30 days of entry, the consular officer may presume that the applicant misrepresented his or her intention in seeking a visa or entry." *Id.* at § 40.63 N4.7-2.[1] "MV Viking Princess Utilityman Joining Vessel In West Palm Beach, FL" is clearly stamped on the applicant's visa. *Applicant's C1/D Visa*, issued December 1, 1995. The visa stamp reflects the applicant's stated intention at the time of entry (i.e. admission). Similar to the examples in FAM § 40.63 N4.7-2, the applicant violated his nonimmigrant status within 30 days of admission through an action which was contrary to his stated intention at the time of admission. This contrary action was not joining his appointed vessel.[2] As such, it is presumed that the applicant misrepresented his intention when applying for admission.

The AAO notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In the present case, the qualifying relatives are the applicant's spouse and parents. Hardship to the applicant's U.S. citizen child will be considered in so far as it affects these qualifying relatives. If extreme hardship is established to the applicant's spouse or parents, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel asserts that the district director relied on *Matter of Pilch* 21 I & N, Dec. 627 (BIA 1996) for the proposition that "the mere loss of employment, the inability to maintain one's present standard of living or to pursue a chosen profession, or separation from a family member or cultural readjustment do not constitute extreme hardship." *Brief in Support of Appeal*, at 5. Counsel claims that the cited quote is an

---

[1] The applicant, who is a nursing school graduate, accepted a position as a certified nursing aid in January 1996. *Applicant's Form G-325A*, dated February 3, 1998. As the date he started employment in January 1996 is not mentioned in the record, it is not clear whether he worked as a certified nursing aid within 30 days of entry.

[2] The applicant states that he intended to join the cruise line, but his father's health was in jeopardy and his mother wanted him to stay in Los Angeles. *Applicant's Statement*, at 1, dated December 13, 2001. Although the applicant's father's medical records reflect that he was taking medication around the time that the applicant entered the United States, they also reflect that he had not had chest pains in over three years. *Medical Records of the Applicant's Father*, dated December 6, 1995. The medical records do not reflect that his health was in jeopardy. There is no other substantiating evidence to verify the applicant's statement. Therefore, the AAO does not find the applicant's aforementioned statement to be sufficient to establish that his father's health was in jeopardy at the time of his arrival in the United States.

oversimplification of the holdings of Board of Immigration Appeals (BIA) precedent. *Id.* The AAO notes that this is a near verbatim quote from *Matter of Pilch* and it is relevant to the applicant's case. In addition, counsel has not presented any extreme hardship case law which would support the applicant's case. Counsel states that *Matter of Pilch* does not stand for a blanket proposition that family separation does not amount to extreme hardship. *Id.* The AAO notes that the BIA indicates that family separation in and of itself does not constitute extreme hardship and that every section 212(i) waiver case will inherently involve family separation.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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 a qualifying relative must be established in the event that the qualifying relative resides in the Philippines or in the event that the qualifying relative resides in the United States, as there is no requirement to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to the Philippines. The record is not clear as to the qualifying relatives' family ties to the United States other than the applicant's son. Counsel states that the applicant's spouse would be forced to live in abject poverty and her family's bright future would be destroyed. *Brief in Support of Appeal*, at 2. The record does not include any evidence to support counsel's claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no evidence that the applicant's spouse or parents would experience financial or medical hardship if they relocated to the Philippines. In addition, the AAO notes that the applicant's spouse and parents are originally from the Philippines and are therefore, familiar with the language and culture. Therefore, the record does not evidence extreme hardship to a qualifying relative in the event of relocation to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse would be forced to raise their U.S. citizen child alone. *Brief in Support of Appeal*, at 3. The applicant's spouse details her history with the applicant and how he supported her through her father's illness and death. *Statement of the Applicant's Spouse*, at 2, dated June 9, 2005. The applicant's spouse states that as a result of a back deformity, the applicant assists with the heavy chores. She further asserts that he is the decision maker in the family, assists their son in several things and that she would not be able to raise their son on her own. *Id.* The applicant's spouse states that she depends on the applicant in all aspects of her life. *Id.* at 3. The psychological evaluation indicates that the applicant's spouse has a lower back deformity which results in her needing the applicant's assistance in lifting heavy objects, she has thyroid problems which require monitoring

and she would be become depressed if the applicant were removed. *Psychological Evaluation*, at 11, dated June 1, 2005. Although the input of any medical or mental health professional is respected and valuable, the AAO notes that the submitted report is based on a one-time meeting and there is no mention of a follow-up appointment, proposed therapy or treatment for the applicant's spouse. Accordingly, the AAO does not find the report's conclusions to carry sufficient evidentiary weight to establish extreme hardship. In regard to the applicant's parents, the applicant's father states that he has given them a lot of support and taking him away would cause extreme emotional anguish and hardship. *Statement of the Applicant's Father*, at 1, dated December 13, 2001. The record reflects that the qualifying relatives will face emotional difficulty without the applicant, however, a thorough review of the record does not reflect extreme hardship to them.

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. Moreover, the AAO notes that 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 AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relatives caused by the applicant's inadmissibility to the United States. 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 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.