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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: FEB 19 2009

IN RE: Applicant: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, San Francisco, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The district director concluded that the applicant 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 September 15, 2004.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated November 8, 2004. Counsel asserts that the district director applied an erroneous standard of extreme hardship, and denied the application based on an exercise of discretion that was arbitrary, capricious, and unduly punitive. *Statement from Counsel on Form I-290B*, dated September 30, 2004.

The record contains a brief from counsel in support of the appeal; statements from the applicant and the applicant's husband; medical documentation for the applicant's husband; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; a copy of the applicant's husband's naturalization certificate; tax and employment information for the applicant and her husband; documentation in connection with the applicant's prior application for asylum; documentation in connection with the applicant's attempt to enter the United States using a fraudulent visa; documentation associated with the applicant's proceedings in Immigration Court; documentation regarding the applicant's prior application for a waiver of ground of inadmissibility, and; a psychological evaluation of the applicant's husband submitted with the applicant's prior waiver application. The entire record was reviewed and considered in rendering this decision.

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 attempted to enter the United States using a fraudulent nonimmigrant visa on February 16, 1986. She provided a sworn statement that she paid for the visa and did not apply through official means at a U.S. Consulate or Embassy, thus she was aware that she was presenting a fraudulent visa. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.[1]

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

*Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 spouse or parent in 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.

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).

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[1] The applicant previously filed a Form I-601 application for a waiver on March 30, 1998, which was denied by the district director on May 6, 1999. The applicant appealed the denial to the AAO, and the AAO dismissed the appeal on November 26, 1999. The applicant filed two separate motions before the AAO, yet upon granting each motion the AAO affirmed its prior dismissal. The present appeal arises due to the applicant's second Form I-601 application, filed in 2003 and denied by the district director on September 15, 2004.

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated November 8, 2004. Counsel explains that the applicant's husband has health problems including progressive artery disease that has required "numerous coronary interventions." *Id.* at 1. Counsel states that the applicant's husband requires close supervision and specialized medical care, and that his doctor noted that he will likely need frequent hospitalization and further coronary interventions. *Id.* Counsel states that the applicant's husband also has diabetes, heart disease, urine and sleep problems, pneumonia, and high blood pressure. *Id.* at 2. Counsel suggests that the applicant's husband's poor health will cause him hardship should he relocate to the Philippines. *Id.*

Counsel contends that the applicant's husband has a close relationship with his two adult U.S. citizen children, and that he will endure emotional hardship if separated from them. *Id.* Counsel states that conditions in the Philippines are poor including terrorist activity, suggesting that the applicant's husband would be at risk there. *Id.*

Counsel asserts that the district director applied an erroneous standard of extreme hardship, and denied the application based on an exercise of discretion that was arbitrary, capricious, and unduly punitive. *Statement from Counsel on Form I-290B*, dated September 30, 2004.

The applicant provided a psychological evaluation of her husband conducted by [redacted], a licensed psychologist. The report was generated as the result of a single interview on September 25, 2000 for the purpose of supporting an application for a waiver. *Report from* [redacted], dated September 25, 2000. [redacted] stated that the applicant's husband came to the United States with his family when he was 19 years old. *Id.* at 1. She provided that the applicant's husband has three brothers living in the San Francisco Bay area where the applicant and her husband reside. *Id.* She explained that the applicant and her husband were married in May 1997 and they enjoy a close and warm relationship. *Id.* at 2. [redacted] described the applicant's husband's medical history. *Id.* Dr. [redacted] stated that the applicant's husband described symptoms that could have been related to depression during the period when he was dealing with marital problems from his previous marriage and divorce. *Id.* She indicated that the possibility of loss of the applicant is causing him to experience difficulty making decisions, impaired concentration, obsessive worrying, difficulty "getting things done," sleep problems, anxiety, feelings of helplessness, headaches, increased appetite to cope with stress, irritability, periods of panic, and chest pains. *Id.* She stated that the applicant's husband displays the symptoms of Adjustment Disorder with Mixed Emotional Features – Depression and Anxiety. *Id.* at 3. [redacted] indicated that separation from the applicant could impact the applicant's husband's physical and emotional health. *Id.*

The record contains a statement from the applicant's husband in support of the applicant's prior Form I-601 application for a waiver. The applicant's husband explained that, should the applicant be compelled to depart the United States, he will have to choose between his children and the applicant, which will cause him emotional distress. *Statement from the Applicant's Husband*, dated June 25, 1999. He explained that he has had the same doctors for many years, and that he won't receive the same level of care in the Philippines. *Id.* at 1. He expressed that although the applicant has medical training, she is not a replacement for his doctors in the United States. *Id.*

The applicant submitted a statement to support her prior Form I-601 application for a waiver, in which she stated that her husband is loving. *Statement from the Applicant*, dated March 26, 1998. She referenced her husband's heath problems, and stated that her medical training ensures that they will be able to live their future together. *Id.* at 1.

The record contains numerous references to the applicant's husband's physical health. The applicant has provided sufficient documentation to show that her husband has artery disease which has caused him to be hospitalized and undergo medical procedures such as multiple angioplasties and a stent. The applicant's husband's doctor stated his opinion that her husband will require a pattern of hospitalization in the future. *Statement from* [redacted], dated April 26, 2003. Given that the applicant's husband has significant health concerns, and he has been under the consistent care of his doctors in the United States, the AAO finds that relocating to the Philippines and disrupting his care would constitute substantial hardship.

The applicant's husband indicated that he is close with his two children in the United States, and he will be separated from them should he return to the Philippines. While the applicant has not shown that this separation can be distinguished from that ordinarily experienced by family members who are separated due to inadmissibility, the AAO gives due consideration to all elements of hardship to the applicant's husband.

The record reflects that the applicant's husband has worked in the United States as a part-time parking attendant since 1999, and with an organization called Tropical California since 1990. It is evident that the applicant's husband would endure the loss of his employment should he return to the Philippines.

Considering all elements of hardship to the applicant's husband in aggregate, the applicant has submitted adequate explanation and documentation to show by a preponderance of the evidence that her husband will experience extreme hardship should he relocate with her to the Philippines.

However, in order to establish eligibility for consideration for a waiver under section 212(i)(1) of the Act, the applicant must show that denial of the present waiver application "would result in extreme hardship" to her husband. Section 212(i)(1) of the Act. The applicant's husband is not required to depart the United States if the waiver application is denied. The applicant has not provided sufficient explanation or evidence to show that her husband would experience extreme hardship should he remain in the United States.

The applicant's husband requires ongoing medical care, which he receives in the United States. Nothing in the record suggests that the applicant's husband depends on the applicant for this care, or that it would cease should she depart.

The applicant provided a psychological evaluation for her husband. Yet, this evaluation was conducted in a single session with [redacted] in 2000, thus it does not reflect an ongoing relationship with a mental health professional or program of treatment. The applicant has not supplemented the record with recent documentation from a mental heath professional, or submitted documentation to

show her husband's current emotional status. While the AAO gives consideration of [redacted] report, it does not show by a preponderance of the evidence that the applicant's husband is presently experiencing emotional consequences that rise to the level of extreme hardship.

It is reasonable that the applicant's husband would experience emotional difficulty should the applicant depart the United States and he remain. However, this is a common result when spouses are separated due to inadmissibility. The applicant has not provided sufficient explanation or evidence to distinguish her husband's emotional hardship from that which is commonly expected. 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.

It is noted that the applicant has not asserted or shown that her husband would endure economic hardship should she depart the United States and he remain. The record supports that the applicant's husband is employed in two positions. Though the applicant has shown that her husband has health problems, her husband is able to work and generate income.

The applicant has not asserted or shown that her husband depends on her for daily needs, or that his health concerns require assistance with common tasks. As the applicant's husband works, it is assumed he can meet his needs in the applicant's absence.

The AAO has considered all elements of hardship to the applicant's husband, individually and in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States and she depart. 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)(1) 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.