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U.S. Citizenship
and Immigration
Services

H2

[redacted]

FILE: [redacted] Office: COLUMBUS (CLEVELAND, OHIO) Date: JAN 26 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).

Michael Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Columbus, Ohio, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It is noted that the applicant, through prior counsel, requested a 30-day extension to submit a brief and/or evidence, but nothing was submitted within 30 days. On August 7, 2008, in response to a facsimile from the AAO, counsel indicated that prior counsel left their office and they "have been unable to establish whether a brief and/or evidence was submitted after [prior counsel] filed the I-290B." *See letter from* [redacted] dated August 7, 2008. Counsel requested five days to provide a brief and/or evidence. However, the AAO notes that nothing was submitted by current counsel within 5 days of August 7, 2008; therefore, the record is considered complete.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining an immigration benefit through fraud. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated January 25, 2006.

On appeal, the applicant, through previous counsel, asserts that the applicant's marriage to her first husband "was void from the beginning due to the fact that she was under 18 years of age at the time the union was entered into." *Form I-290B*, filed February 24, 2006. The AAO notes that the applicant's first marriage was annulled based on the applicant's first husband being unable "'to comply with the essential marital obligations of a married life.'" *Decision by* [redacted] dated February 28, 2003. The AAO notes that the decision does not mention that the marriage was invalid based on the ages of the parties. Further, counsel claims that the applicant's husband and United Sates citizen son will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B, supra.*

The record includes, but is not limited to, a decision by [redacted] **of the Third** Judicial Region in the Philippines, a decree of dissolution of marriage for the applicant's second marriage, and marriage certificates for the applicant's three marriages. **The entire record was** reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) In general.-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 of the Act provides, in pertinent part, that:

(i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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 AAO notes that the record contains references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that on June 4, 1998, the applicant's current husband filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On August 5, 1998, the applicant's Form I-129F was approved. On June 28, 1999, the applicant entered the United States on a K-1 nonimmigrant visa. On July 24, 1999, the applicant married her current husband.[1] On March 7, 2001, the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) was approved and she became a lawful permanent resident of the United States. On September 9, 2002, the applicant's marriage to her current husband was terminated. On February 28, 2003, [redacted] found that the applicant's first marriage, which occurred on June 8, 1985 in the Philippines, was null and void. On May 2, 2003, the applicant remarried her current husband. On July 5, 2003, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-485 and Form I-601. On January 19, 2005, the applicant's Form I-130 was approved. On February 3, 2005, the applicant's status as a lawful permanent resident of the United States was terminated. On January 25, 2006, the District Director

[1] The AAO notes that the first time that the applicant married her current United States citizen husband, she was still married to a citizen of the Philippines.

denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's husband and son will suffer extreme hardship if the applicant is removed to the Philippines. [redacted] states "[t]here would be an extreme hardship on the son who is born of the union in the United States." *Letter attached to Form I-601*, dated June 27, 2005. The AAO notes, as noted above, the applicant's son is not a qualifying relative for a waiver under section 212(i) of the Act. Counsel states the applicant's husband "has held two full time jobs over the past six years to support [the applicant] and seven children.... He strives to provide a stable family environment for his children." *Form I-290B, supra.* The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in the Philippines. Additionally, the AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding the extreme hardship he would suffer if the applicant were removed from the United States. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and in close proximity to his family. Counsel claims that the applicant "provides emotional stability.... It would be a severe emotional and physical strain on [the applicant's husband] if he chose to follow [the applicant] back to the Philippines." *Id.* As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel claims that the applicant's "income is pivotal in providing for the family's financial stability." *Form I-290B, supra.* The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her

family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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 husband 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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)(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.