U.S. Department of Homeland Security
20 Massachusetts Ave., N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

43

[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: SEP 26 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, Manila, Philippines. The matter 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 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 United States citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting immigration attaché found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Acting Immigration Attaché,* dated May 14, 2004.

On appeal, the counsel asserts that extreme hardship was proven, the acting immigration attaché failed to address the grounds of hardship described by the applicant and erred as a matter of law in denying the application. *Form I-290B*, dated June 14, 2004.

In support of these assertions, counsel submits a brief, relevant case law, affidavits from the applicant's spouse and various articles regarding employment in the Philippines. The record also includes, but is not limited to, a physician's letter for the applicant's spouse and letters from his church. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States with a visitor visa on April 20, 1997 with authorization to remain in the United States until October 19, 1997. The applicant departed the United States on June 11, 1999. Therefore, the applicant accrued unlawful presence from October 20, 1997 until June 11, 1999, the date she departed the United States. In applying for a spouse visa, the applicant is seeking admission within 10 years of her June 11, 1999 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.
> >
> > . . . .

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 AAO notes counsel's footnote questioning why the acting immigration attaché cites section 212(i) of the Act in his decision and agrees that this section is irrelevant to the case at hand.

Counsel asserts that the case law cited by the acting immigration attaché is distinguishable from the case at hand because the cited cases dealt with criminal aliens and waivers under section 212(h)(1) of the Act. *See Brief in Support of Appeal*, at 1, undated. The AAO notes that the acting immigration attaché does not state that the applicant's situation is similar to the cited cases and therefore deniable, rather the acting immigration attaché is citing these cases due to the relevant legal language contained therein and then applies the applicant's facts to the relevant law.

Counsel cites *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001) and *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001) as relevant cases because they deal with aliens who were found to be of good moral character. *Brief in Support of Appeal*, at 2. Counsel contends that these cases demonstrate that extreme hardship is a fairly low level of hardship. *Id.* at 3. However, neither of these cases have similar fact patterns as the case at hand and they involve child applicants who are generally more vulnerable in cases of separation as they do not have the option of remaining in the United States without their parents. However, the applicant's spouse is capable of supporting himself in the United States. Furthermore, the issue in extreme hardship analysis is to apply the facts of the applicant's case to the relevant case law. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) is the precedent case in extreme hardship analysis as it 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 are relevant in section 212(a)(9)(B)(v) waiver proceedings as it deals with extreme hardship and include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The record indicates that the applicant's spouse has four brothers, one sister and five grandchildren in the United States. The legal statuses of these relatives are not mentioned in the record. The record does not indicate that the applicant's spouse has any family ties to the Philippines. *Brief in Support of Appeal*, at 6.

The record includes information on the conditions in the Philippines including information on terrorist activity. *See Excerpt of the Department of State Public Announcement*, dated January 16, 2004. The applicant's spouse states that two attempts were made to physically assault him during his four-year residence in the Philippines and the police took no action, perhaps due to his nationality. *Affidavit from Applicant's Spouse*, at 1, dated June 8, 2004. The record does not mention the ties of the applicant's spouse to the Philippines, although he states that he was unable to learn the native language while residing in the Philippines. *Id.*

The record includes information on the financial impact of departure. The record includes documentation verifying the high unemployment rate and the difficulty involved with obtaining a teaching license in the Philippines. The record indicates that it is improbable that the applicant's spouse could obtain employment as a teacher in the Philippines. The record does not indicate if the applicant is employed in the Philippines.

The applicant's spouse states that he lived in the Philippines for four years and developed chronic stomach pain and increased blood pressure due to stress. *Id.* After returning to the United States, the applicant's spouse states that the stomach distress returned after the applicant's case was denied and he became very depressed. *Id.* The record includes a letter from a medical doctor, which states that the applicant's spouse has depression, insomnia and gastric problems. *Letter from Physician*, dated March 22, 2004. The physician states that the condition of the applicant's spouse is worsening every day, but there is no indication of the severity of the applicant's spouse's problems. *Id.* Furthermore, in contradiction to the physician's letter, the applicant's spouse states that the medications and the doctor's support have been effective in controlling his medical problems. *Affidavit from Applicant's Spouse*, at 2.

After a thorough review of the record, the AAO finds that the applicant's spouse will face hardship if he relocates to the Philippines, however, he has not shown extreme hardship in the event that he remains in the United States maintaining his employment and access to health care. The AAO notes that as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

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 deportation or exclusion 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 spouse 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. The AAO notes that the record fails to address discretionary factors in significant detail.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.