

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



*H2*

FILE: [REDACTED]

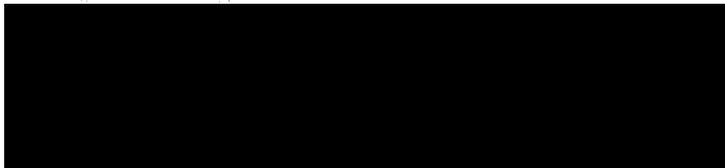
Office: CHICAGO, IL

Date: **NOV 21 2005**

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:



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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The District Director, Chicago, Illinois denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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 U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, March 16, 2004.*

On appeal, counsel contends that the district director erred in not providing a reasoned explanation of his decision demonstrating that he considered all relevant factors in the record. Counsel further contends that removal of the applicant would cause extreme hardship to his United States citizen spouse.

The entire record, including Counsel's brief, the affidavits of the applicant and his wife, a psychological report, all previous decisions, applications and petitions filed in this matter have been considered in rendering this decision.

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.

Section 212(i) of the Act provides:

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 applicant was admitted to the United States on October 3, 1993 at Chicago, Illinois, after presenting a passport that was not lawfully issued to him. He is therefore inadmissible under section 212(a)(6)(C).

The section 212(i) waiver of inadmissibility is dependent first upon a showing that the removal of the applicant will impose extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant does not have a U.S. citizen or resident parent. Therefore he must show that his inadmissibility imposes extreme hardship on his U.S. citizen wife. Hardship the applicant himself

experiences upon removal is irrelevant to these proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should favorably exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible." 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). The 7<sup>th</sup> Circuit Court of Appeals also adopts logic similar to *Cervantes-Gonzalez*. The Board may construe the phrase extreme hardship "narrowly;" extreme hardship does not have a "fixed and inflexible definition;" the hardship shown must be "substantially different from and more severe than that suffered by the ordinary alien who is deported." *Urban v. INS*, 123 F.3d 644 (7<sup>th</sup> Circuit 1997), citing to *I.N.S. v. Jong Ha Wang*, 450 U.S. 139, 145, 101 S.Ct. 1027, 1031, 67 L.Ed.2d 123 (1981) (per curiam) and *Palmer v. INS*, 4 F.3d 482 at 487-88 (quoting *Sanchez v. I.N.S.*, 755 F.2d 1158, 1161 (5<sup>th</sup> Cir.1985)). Among the factors the Board takes into account are the applicant's health, especially when tied to inadequate medical care in the home country; advanced age; length of residence in the United States; and family and community ties in the United States and abroad. *In re Anderson*, 16 I & N Dec. 596 (1978). *Matter of Cervantes-Gonzalez*, also sets forth a list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez v. INS*, 809 f.2d 1419, 1423 (9<sup>th</sup> Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3<sup>rd</sup> Cir. 1979). However, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship.

The record indicates that the applicant and his wife were married on September 20, 1997 and thus have been together as husband and wife for more than eight years. They live together and share expenses. They have family and friends living in the United States, they belong to a church, they each have jobs and they own a home together. The immediate and extended family of the applicant's wife lives in the United States. There is no evidence as to whether the applicant's wife speaks Tagalog or has any family remaining in the Philippines. The record is clear that the applicant's wife has considerable ties to the United States but it is not clear that she has no ties to the Philippines, the country in which she was born.

Since the applicant and his wife share expenses and both have full-time employment, removal of the applicant would have an adverse financial impact upon the applicant's wife. Counsel indicates that the applicant's wife would not be able to find a comparable job in the Philippines and would go from a "comfortable but modest lifestyle" in the United States to a "struggling lifestyle" in the Philippines. If she remained in the United States, the applicant's wife would have difficulty maintaining mortgage payments and trouble supporting her

household in the United States and her husband's in the Philippines. See *Counsel's Brief*, pages 3-4. However, economic disadvantage, standing alone, does not qualify as extreme hardship and the applicant has not demonstrated the total inability to find work. *Urban v. INS* 123 F.3d 644 (7th Circuit 1997), citing to *Santana Figueroa v. I.N.S.*, 644 F.2d 1354, 1357 (9th Cir.1981) and *Carrete-Michel v. I.N.S.*, 749 F.2d 490, 493 (8th Cir.1984). In *Urban*, the 7<sup>th</sup> Circuit contrasts cases in which courts find extreme hardship due to inability to work from cases involving individuals whose circumstances are not so drastic, citing to cases where extreme hardship was not found such as *Bueno-Carrillo v. Landon*, 682 F.2d 143, 147 (7th Cir.1982) (where alien was 51 years old and healthy); *Kuciemba v. INS*, 92 F.3d 496 at 500 (7th Cir.1996) (claimed unemployability undercut because alien was "young, healthy, and skilled"); *Hernandez-Patino v. I.N.S.*, 831 F.2d 750, 754-55 (7th Cir.1987) (rejecting hardship claim based on limited employment opportunities where factors such as advanced age and illness were "simply not present"); *Marquez-Medina*, 765 F.2d at 676 (rejecting claim of extreme hardship where the alien did not suffer from any "physical or mental impairment which would restrict his employment"). The applicant's spouse was born in 1968 and there is no evidence of physical or mental impairment that would make her unable to work.

Counsel also submitted a psychological report indicating that the applicant's spouse is a highly dependent individual, who has never established an independent lifestyle. The psychologist found that she lacked the self-confidence needed to overcome her husband's removal from the United States. Her symptoms of depression could worsen. Finally, the psychologist recommended that the applicant's wife seek psychotherapy as a way to "overcome her depression and anxiety, and to explore the excessive dependency that marks her character." See *Psychological Report*, Shira E. Saville, Psy.D. May 24, 1999. While this report indicates that the applicant faces great psychological difficulty if her husband is removed, it also recommended a course of action to alleviate some of those difficulties. That recommendation was made more than six years ago. There is no evidence in the record to indicate whether the applicant has sought psychotherapy or other treatment options during the past six years. However, the report does not indicate that the applicant's dependence and depression could not be overcome or that they were completely disabling, it only indicates that removal could cause problems.

When considered in the aggregate, it is clear that the applicant's wife faces significant difficulties if the applicant is removed from the United States. However, taken together, these difficulties do not rise above what could be considered a typical consequence of one family member's removal. The applicant has failed to show that his U.S. citizen wife would suffer extreme hardship if he were removed from the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. Thus, the AAO finds it unnecessary to determine whether the acting district director erred in his analysis of the favorable and unfavorable discretionary factors in the applicant's case.

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. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.