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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date: **JUL 07 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen was then summarily dismissed by the AAO. The motion to reopen is reopened sua sponte by the AAO. The motion will be granted and the previous decisions of the district director and the AAO on appeal will be affirmed. The application is denied.

The applicant is a native and citizen of the Philippines who was determined 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 procured admission to the United States by fraud or willful misrepresentation on two separate occasions and for having attempted to procure admission to the United States by fraud or willful misrepresentation on a third occasion. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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 spouse and children.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 1, 2002. The decision of the district director was affirmed by the AAO on appeal. *See AAO Decision*, dated November 15, 2002. A subsequently filed motion to reopen was summarily dismissed by the AAO based on the applicant's failure to identify any erroneous conclusion of law or statement of fact in the appeal. *See AAO Decision*, dated January 5, 2004. Counsel now provides evidence of the applicant's filing of a brief prior to the AAO's decision on the motion to reopen. *See Certified Mail Receipt*, stamped July 30, 2003.

On motion to reopen, counsel contends that the applicant's removal meets the extreme hardship requirement; that the applicant is a person of good moral character and that she is sorry and remorseful of her "immigration history". *Motion to Reopen*, dated July 21, 2003. In support of these assertions, counsel submits a brief; a Social Security benefits letter addressed to the applicant's spouse; a letter from the landlord of the applicant and her spouse and a copy of the lease; verification of the employment of the applicant and a letter from a physician providing care to the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the applicant's motion to reopen.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish

that the decision was incorrect based on the evidence of record at the time of the initial 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:

- (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, in March 1976, the applicant used a United States passport in the name of another person to obtain admission into the United States. The record further reflects that, in December 1977, the applicant attempted to use the same passport to obtain admission to the United States a second time. The applicant was placed in exclusion proceedings and absconded. On January 9, 1979, the applicant was ordered deported by an immigration judge and was subsequently removed from the United States. The record reflects that, in May 1994, the applicant used a passport and nonimmigrant visa in the name of another person to obtain admission into the United States.

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) 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 upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 (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 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.

On motion to reopen, counsel contends that the applicant's spouse suffers from several ailments and requires the assistance of the applicant as a result. *Motion to Reopen*, dated July 21, 2003. In support of this assertion, counsel submits a letter from a physician providing care to the applicant's spouse indicating that the applicant's spouse suffers with emphysema, severe prostate hypertrophy, gastroesophageal reflux disease, chronic low back pain and depression. *Statement from* [REDACTED] dated April 1, 2003. While any medical suffering by the applicant's spouse is regrettable, the AAO notes that the above-listed conditions were established in the record prior to the instant motion to reopen and the evidence was addressed in the previous decisions of the district director and the AAO. The previous decisions found that the medical conditions of the applicant's spouse documented in the record failed to establish that the applicant's spouse would suffer extreme hardship in the absence of the applicant. The decision of the AAO on appeal specifically stated that the record failed to demonstrate that no other individual could provide care to the applicant's spouse in the absence of the applicant. *Decision of the AAO* ("The record fails to mention any assistance that one or more of [REDACTED] seven children from his former marriage might be able to provide."). The record on motion to reopen does not address this point. The AAO acknowledges that the writing physician states that the applicant's spouse is unable to care for himself. *Statement from* [REDACTED]. However, the record fails to offer elaboration regarding the nature and extent of care that the applicant's spouse requires on a daily basis for his ailments. The writing physician claims that the applicant's spouse requires assistance in communicating owing to his limited English abilities, however the record fails to establish how the applicant's spouse managed to communicate prior to his marriage to the applicant.

Counsel contends that extreme hardship would be imposed on the applicant's spouse as a result of relocation to the Philippines in order to remain with the applicant. Counsel claims that the Philippine economy has declined significantly since the applicant's spouse left his home country and that it is a third world country characterized by high unemployment rates and lack of health care. *Motion to Reopen* at 4-5. However, counsel fails to offer documentation to substantiate these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaignena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant.

However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The applicant fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Further, the applicant fails to establish that the prior decision of the AAO was based on an incorrect application of law or Citizenship and Immigration Services policy.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 previous decisions of the district director and the AAO will not be disturbed.

**ORDER:** The motion is granted. The prior decisions are affirmed and the waiver application is denied.