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U.S. Citizenship
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[Redacted]

FILE: [Redacted] Office: SAN FRANCISCO Date: MAY 26 2006

IN RE: [Redacted]

PETITION: 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 PETITIONER:

[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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, California, denied the waiver application and it 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)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States. 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.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *Decision of the District Director*, dated May 13, 2004.

The record reflects that, on March 12, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at CIS' San Francisco District Office on October 22, 2003. The applicant testified that, on April 14, 2000, she entered the United States by presenting a Philippine passport and a U.S. nonimmigrant visa that she had obtained by presenting a false birth certificate, false marriage certificate and by providing a false name and date of birth.

On December 17, 2003, the applicant filed the Form I-601 along with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On May 13, 2004, the district director issued a notice of denial of the application as the applicant was inadmissible because she had procured admission into the United States by fraud and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel asserts that the district director did not consider all the relevant factors in determining that the applicant had failed to establish extreme hardship. *Applicant's Brief*, dated June 15, 2004. In support of these assertions, counsel submitted the above-referenced brief and verification that the applicant had recently given birth to a U.S. citizen daughter. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted use of a fraudulently obtained passport and U.S. nonimmigrant visa to procure admission into the United States in 2000. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen daughter will not be considered in this decision, except as it may affect the applicant's husband, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and 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 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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. The BIA has held:

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).

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 record reflects that, on November 10, 2002, the applicant married her U.S. citizen spouse, [REDACTED] is a native of the Philippines who became a lawful permanent resident of the United States in 1992 and a naturalized U.S. citizen in 2002. The applicant and her spouse have a two-year old daughter who is a U.S. citizen by birth. The record reflects further that the applicant is in her 30's, [REDACTED] is in his 20's, and [REDACTED] has no health concerns of his own.

Counsel asserts that [REDACTED] would suffer extreme hardship if he were to remain in the United States without the applicant. Counsel contends that [REDACTED] would not be able to financially support himself and his daughter because he would be unable to care for her during the day. Financial records indicate that [REDACTED] has contributed substantially to the couple's household income over the years, averaging \$32,698. The record does not contain information in regard to the income generated by the applicant. However, the record shows that, even without assistance of the applicant, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that [REDACTED] would essentially become a single parent and professional after-school childcare may involve an added expense and not equate to the care of a mother, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. The record does not support a finding of financial loss that would result in an extreme hardship to him if he had to support himself and his daughter without financial or child care assistance from the applicant.

Counsel contends that [REDACTED] would suffer emotional hardship if he remained in the United States and his wife returned to the Philippines. To support his contentions, counsel submitted medical documentation for the applicant indicating that, in October 2003, she was under the care of a doctor for diabetes. Counsel asserts that [REDACTED] will suffer extreme emotional hardship because he is concerned as to whether the applicant would receive proper medical care in the Philippines and because he would be separated from his wife and their daughter. However, there is no evidence in the record to suggest that the applicant would be unable to receive adequate treatment in the Philippines such that it would cause [REDACTED] to suffer emotional hardship that rises to the level of extreme hardship and there is no evidence in the record to suggest that [REDACTED] or his daughter, suffer from a physical or mental illness that would cause [REDACTED] to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation whether the applicant returned to the Philippines with their daughter or by herself. Moreover, according to the record, [REDACTED] has family members in the United States who may be able to support him emotionally in the absence of his wife.

Counsel contends that [REDACTED] would face extreme hardship if he relocated to the Philippines in order to remain with the applicant. Counsel states [REDACTED] would face extreme hardship because he has been in the United States for such a long period of time, it would be an emotional hardship to leave his parents and siblings in the United States, and the substandard economic situation in the Philippines would not afford him, the applicant and his daughter the educational, employment, medical and standard of living opportunities that they would have in the United States. Counsel asserts that [REDACTED] is concerned that the applicant would not receive adequate medical care in the Philippines for her diabetes. As discussed above, there is no evidence in the record that she would not receive appropriate care in the Philippines. Counsel asserts that [REDACTED] is concerned that his newborn daughter would not receive adequate medical care in the Philippines. However, there is no evidence in the record to suggest that [REDACTED] daughter suffers from a mental or physical

illness that requires ongoing or special treatment. Additionally, there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. While counsel contends that the applicant would have to leave behind his parents in the United States, [REDACTED] Biographic Information (Form G-325) reflects that both of [REDACTED] parents, while they may be a U.S. citizen and a U.S. lawful permanent resident, reside in the Philippines. There is no evidence in the record to suggest that [REDACTED] and the applicant would be unable to find *any* employment in the Philippines. While the hardships faced by [REDACTED] with regard to adjusting to the economy of the Philippines are unfortunate; they are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Finally, the AAO notes that, as U.S. citizens, the applicant's spouse and daughter are not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. **Rather, the record demonstrates that [REDACTED] will face no greater hardship than the** unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.