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U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date: OCT 06 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Chicago, Illinois, 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 Immigration and Nationality Act (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 and mother of U.S. citizens. 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 daughter.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 1, 1999.

The record reflects that, on April 29, 1992, the applicant obtained admission to the United States by presenting a passport belonging to another. On July 23, 1997, the applicant married her naturalized U.S. citizen spouse, [REDACTED] (Mr. [REDACTED]). On September 17, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed by Mr. [REDACTED]. During an interview at Citizenship and Immigration Services' (CIS) Chicago District Office, the applicant admitted to procuring admission to the United States by fraud in 1992. On February 16, 1999, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's spouse and daughter would suffer extreme hardship if the applicant were denied admission to the United States. *See Applicant's Brief*, dated June 22, 1999. In support of his contentions, counsel submitted a brief, a psychological report and mortgage documents for the applicant and her spouse. The entire record was reviewed in rendering a decision in this case.

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.

The district director based the applicant's finding of inadmissibility on the applicant's admitted procurement of admission by fraud in 1992. Counsel does not contest the district director's determination of inadmissibility.

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

- (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 record reflects that Mr. [REDACTED] is a native of the Philippines who became a lawful permanent resident in 1971 and a U.S. citizen in 1982. The applicant and Mr. [REDACTED] have a six-year old daughter who is a U.S. citizen by birth. The record further reflects that the applicant and Mr. [REDACTED] are in their 40's.

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. Counsel contends that hardship to the applicant's daughter should be considered in determining whether the applicant has established that a qualifying family member will suffer extreme hardship. 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 spouse, 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).

Counsel contends that Mr. [REDACTED] would suffer extreme hardship if he were to remain in the United States without the applicant because he could not afford to financially support two households and he is emotionally dependent on the applicant due to their shared experience of estrangement from family members. In his affidavit, Mr. [REDACTED] states that his and the applicant's emotional, mental, financial and psychological bonds are so enormous that it would cause him undue and extreme hardship if she were denied the waiver. The psychological report indicates that the applicant and Mr. [REDACTED] are both distressed by the thought that the applicant's waiver would be denied and forced separation or relocation would be seriously deleterious to them as individuals and as a family.

Financial records indicate that, in 2002, Mr. [REDACTED] earned approximately \$75,200. There is no evidence in the record that the applicant would be unable to secure *any* income to support herself in the Philippines. Additionally, the record reflects that the applicant has family members in the Philippines, such as her mother, who may be able to provide her with financial or physical assistance, which would ease Mr. [REDACTED] financial responsibilities. The record shows that, even without assistance from the applicant or other family members, Mr. [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>. If the applicant's daughter were to remain in the United States with Mr. [REDACTED] while it is unfortunate that Mr. [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. While it is unfortunate that Mr. [REDACTED] may have to lower his standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

The psychological report was based on two meetings with Mr. [REDACTED] and does not indicate that he has a history of depression or any other mental illness. While the report states that Mr. [REDACTED] and the applicant do have a somewhat interdependent relationship, it indicates that their estrangements from family members are not as complete as counsel implies in his brief, and that their relationships are such that the applicant would be able to return to the Philippines and reside with her mother. The report does not indicate that Mr. [REDACTED] would be unable to function as a result of the loss of the applicant or that his reaction would be greater than that of those similarly situated. The report also states that the marriage would survive the forced separation or relocation entailed in the denial of the applicant's waiver. The report does not indicate that Mr.

[REDACTED] has received psychological treatment or evaluation other than during the two meetings used to compile the report and does not indicate that he requires on-going treatment. The report can, therefore, be given little weight. Additionally, the AAO notes that Mr. [REDACTED] did not state he had abnormal psychological problems until after the Form I-601 was denied and there was no mention of any psychological problems in the affidavit, which Mr. [REDACTED] submitted with the Form I-601. There is no evidence in the record to suggest that Mr. [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While the hardships Mr. [REDACTED] faces are unfortunate, the hardships faced by him with regard to adjusting to a lower income and separation from the applicant and possibly his daughter, are what would normally be expected when an alien spouse is deported to a foreign country.

Counsel does not argue that Mr. [REDACTED] would suffer if he were to return to the Philippines with the applicant. However, the psychological report indicates that Mr. [REDACTED] would be willing to relocate to the

Philippines with the applicant but that it would lead to resentment towards the applicant because of the loss of his employment and home in the United States. Mr. [REDACTED] does not indicate in his affidavit that he would return to the Philippines with the applicant or whether he would suffer any hardship upon returning to the Philippines. As discussed above, there is no evidence that Mr. [REDACTED] suffers from a physical or mental illness that would cause him to experience emotional or physical hardship beyond that normally expected or for which he would be unable to receive treatment in the Philippines. While the hardships Mr. [REDACTED] faces are unfortunate, the hardships faced by him with regard to adjusting to a lower standard of living and readjusting to his native country, are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, even if counsel had established Mr. [REDACTED] would suffer extreme hardship by accompanying the applicant to the Philippines, 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 and, as discussed above, Mr. [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 Mr. [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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 an 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.