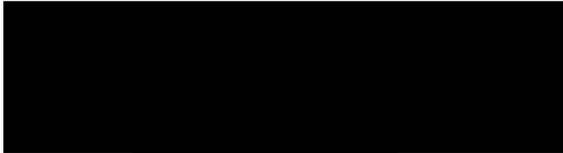


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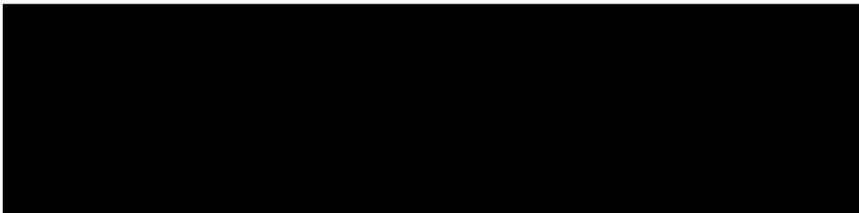
Date: OCT 19 2006

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (the 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The district director, Los Angeles, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED] is a native and citizen of the Philippines who entered the United States on March 26, 1990, using a fraudulent passport, and applied for adjustment of status on May 9, 2001. In order to remain in the United States with his U.S. citizen (U.S.C.) spouse, [REDACTED] and their 3 U.S.C. children, the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for having sought to procure admission into the United States by fraud or willful misrepresentation.

The record reflects that [REDACTED] used a fraudulent passport and visa for entry into the United States in 1990. As a result of this misrepresentation, the director found the applicant 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). *District Director's Decision*, dated November 2, 2004. The district director also found that the applicant 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). *Id.*

On appeal, counsel submits a brief and additional documentation. The record includes the following: a supplemental hardship statement from [REDACTED]; [REDACTED] naturalization certificate; the couple's marriage certificate; birth certificates for the couple's three USC children, [REDACTED] age 8, [REDACTED] age 6, and [REDACTED] age 2; a letter outlining [REDACTED] medical conditions, including cranial syntosis/ R / O Arachnoid cyst, hemiparesis with cerebral palsy, hearing problem, exotropia, bilateral exophoria, and mild mental retardation; medical referrals to a radiologist, an audiologist, and an ophthalmologist for [REDACTED] radiology results showing an abnormal neurological function; a medical report finding that [REDACTED] has a substantially handicapping developmental disability; an ambulatory neurologic evaluation from [REDACTED] diagnosing [REDACTED] as having a significant neurological handicap; a prescription from [REDACTED] stating that [REDACTED] has a cranio-facial anomaly and a right hemiparesis developmental delay, and ordering physical and occupational therapy for her; two letters from [REDACTED] Examination and Progress Report from the L.A. Medical Therapy Unit of L.A. County California Children's Services; Pasadena Child Development Associates Professional and Medical Group's Communication Assessment Report; an employment verification letter for [REDACTED] from Regulus; an employment verification letter for [REDACTED] from Regulus; and tax returns and W-2 Forms from 1999 to 2002. The AAO reviewed the record in its entirety before issuing its decision.

Counsel asserts that [REDACTED] will suffer extreme hardship, psychologically, emotionally and financially, if her husband's waiver application is denied. *Brief in Support of Motion to Reconsider, not dated.*

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

- (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 that:

- (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 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, supra* 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 applicant has established extreme hardship to a qualifying relative 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 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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 asserts that [REDACTED] will experience extreme hardship if [REDACTED] is compelled to depart the United States. *Brief at 16*. Hardship the applicant himself experiences upon denial of his application for admission is not considered in section 212(h) waiver proceedings. Hardship the applicant’s children experience is also not considered except in relation to how it affects the qualifying relative, in this case, the applicant’s U.S. citizen wife.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (Citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

states that she will suffer extreme hardship if her husband must leave the United States and go live in the Philippines without her or if she and her children go live in the Philippines to avoid separation from [REDACTED]. [REDACTED]’ *Hardship Statement*.

[REDACTED] asserts that she cannot take care of her three children by herself, especially since one of them, [REDACTED] suffers from severe developmental disabilities. *Hardship Statement Page 2*. [REDACTED] states that [REDACTED] suffers from hemiplegic cerebral palsy that requires her to wear a leg brace and a brace on her hand to keep it open. In addition, [REDACTED] sees a vocational therapist and a physical therapist regularly. [REDACTED] asserts that [REDACTED] requires MRI scans to assess her neurological development and that as [REDACTED] ages, they continue to discover additional problems that require medical attention and other kinds of developmental intervention. Most recently, they learned that [REDACTED] may require brain surgery. *Hardship Statement Page 3*. [REDACTED] describes a schedule where she and her husband work at the same remittance processing and credit card transaction company, she as a mail sorter, and he as a mail clerk. *Hardship Statement Page 3 and employment verification letters for [REDACTED]* Her husband works the night shift and she works the day shift, so that [REDACTED] can be at home with his youngest child. *Id.* This schedule allows [REDACTED] to take [REDACTED] to the various doctor’s appointments and exams she has.

[REDACTED] asserts that she would not be able to afford to support herself and her three children if [REDACTED] went to live in the Philippines without them. *Hardship Statement Page 4*.

[REDACTED] further asserts that she would suffer if the entire family relocated to the Philippines. [REDACTED] states that she has lived and worked in the United States for many years and has become accustomed to the way of life here. *Id. at 5*. She states that she would suffer by leaving behind her entire family, including her mother, a USC who suffers from kidney problems and lives close by, and her brother, who lives in Texas. Her father and stepfather are deceased. [REDACTED] states that, as a parent, she would suffer tremendously watching her three children try to adjust to life in the Philippines. In particular, [REDACTED] states that she would suffer because [REDACTED] would not get the medical attention, special education, and therapy that she needs there. *Id.* She states that she and her husband struggled for years to get [REDACTED] the care she needed for her disabilities. She is afraid that removing [REDACTED] from her special education school would be too drastic a change for [REDACTED] and that any progress she made would suffer tremendously. *Id.* [REDACTED] states that her children’s suffering at being uprooted and separated from their extended family would be extremely hurtful to her. *Id.* [REDACTED] fears that wages in the Philippines are so low that she and her husband would be unable to support their family.

Counsel asserts that [REDACTED] has lived most of her adult life in the United States and would suffer extreme hardship if her husband's Form I-601 is denied. Counsel asserts that [REDACTED] would suffer extreme financial hardship as she would be unable to support her three children in the United States without [REDACTED]. *Brief at page 8.* Counsel further asserts that [REDACTED] would suffer extreme financial and emotional hardship if she and the children joined [REDACTED] in the Philippines, as she would be unable to support the children and continue to give [REDACTED] the proper care she needs. *Id. at 10.* Counsel asserts that the district director erred by failing to consider the effect that the children's hardship would have on [REDACTED]. *Id. at 4.* Counsel asserts that two significant developments magnify those difficulties: the birth of the [REDACTED] third child and the possible need for [REDACTED] to undergo brain surgery. *Id. 5.* Counsel asserts that the director, by stating that [REDACTED] was not a qualifying relative, failed to consider the effect that [REDACTED] absence would have on [REDACTED] ability to care for [REDACTED] and her two other children. *Id.*

The record shows that [REDACTED] have three U.S. citizen children. The record contains medical documentation to show that [REDACTED] suffers from a serious neurological disorder and my require brain surgery. See [REDACTED] Hardship Statement at page 2; Letter from [REDACTED] dated November 10, 2004; health plan approval for brain MRI, dated June 21, 2004; referral for brain MRI, dated June 22, 2004. The record shows that [REDACTED] disability, though noted by her parents, was not properly diagnosed by doctors for several years. The record also shows that the doctors continue to identify medical problems in [REDACTED] that they had not noted earlier. [REDACTED] hardship statement at 2; Letter from Dr. [REDACTED] dated November 10, 2004; and Ambulatory Neurologic Evaluation by [REDACTED] dated June 6, 2001. The record indicates that these delays have been detrimental to [REDACTED] development, but that with the help of a team of therapists and tutors that [REDACTED] is beginning to make improvements. [REDACTED] doctors and therapists confirm that she needs ongoing care and treatment. See *Examination and Progress Report from the L.A. Medical Therapy Unit of L.A. County California Children's Services; and Pasadena Child Development Associates Professional and Medical Group's Communication Assessment Report.* The latest development in her case is that she may need brain surgery and may have serious hearing problems. [REDACTED] hardship statement at 3. The record also shows that the [REDACTED] have struggled for years to obtain proper medical attention for [REDACTED] and seem to have finally succeeded in doing so.

The record reflects that [REDACTED] are both employed as unskilled workers. [REDACTED] works as a mail clerk and [REDACTED] as a mail sorter. See *employment verification letters for [REDACTED]* They each earn approximately the same amount of money, the total of which keeps them slightly above the poverty level. See *tax returns, W-2', and 2006 Poverty Guidelines.*

Upon a complete review of the evidence of record, the AAO finds that [REDACTED] has established that denial of his Form I-601 would result in extreme hardship to his USC wife.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) ("lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives

which they currently enjoy”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. “Included among these are the personal hardships which flow naturally from an economic loss, decreased health care, educational opportunities, and general material welfare.” *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); see also *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) (“Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”).

The record indicates that [REDACTED] has no close family ties or contacts left in the Philippines. She states that her father and stepfather are deceased and that her mother, a USC, lives close by and suffers from serious kidney problems. [REDACTED] mother is deceased and it is unknown if his father, born in 1916, is still living. See *G-325A*. This lack of support in the Philippines for the family especially because of [REDACTED] serious medical condition, would have a detrimental affect on [REDACTED] if [REDACTED] were forced to relocate to the Philippines and the family joined him there. This lack of support, combined with the diminished family income likely in the Philippines and potential medical problems faced by their daughter [REDACTED] lead to a conclusion that [REDACTED] would indeed suffer extreme hardship if she chose to move to the Philippines to avoid separation from [REDACTED]. Although [REDACTED] suffering cannot be considered directly, its impact on [REDACTED] can be considered. [REDACTED] has clearly articulated that the vast array of resources available to [REDACTED] in California would not be available to her in the Philippines. [REDACTED] has also clearly articulated that the increased financial and emotional burden of taking care of [REDACTED] in the Philippines would be intolerable to her if the family moved to the Philippines.

[REDACTED] would also suffer extreme hardship if she stayed in the United States without [REDACTED]. [REDACTED] has indicated that she would suffer extreme hardship if she and the children remained in the United States and [REDACTED] went to live in the Philippines. Separation of family will therefore be considered in the assessment of hardship factors in the present case. Between the two of them, the [REDACTED] earned \$28,000 in 2003. The employment verification letters and W-2 Forms in the record indicate that [REDACTED] and [REDACTED] earn about the same amount of money sorting and dealing with mail at a remittance center. This is unskilled work that, even if available in the Philippines, would likely be poorly paid.

[REDACTED] works the graveyard shift and takes care of the children during the day while [REDACTED] works. [REDACTED] makes sure [REDACTED] gets to all her doctor’s and therapy appointments. See [REDACTED] hardship statement. His ability to support himself and contribute to his family’s support while living and working in the Philippines would likely be reduced. In those circumstances, his wife would shoulder the burden of supporting herself and their children. The record includes a letter from [REDACTED] employer, dated July 8, 2002, stating that she was employed for 32 to 40 hours per week at \$7.58 per hour.

The AAO notes that [REDACTED] income in 2002 would have fallen well under the amount set by the Department of Health and Human Services Poverty Guidelines for a family of four. Prior HHS Poverty Guidelines, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml> (last revised January 24, 2006). Even with the addition of the minimal support [REDACTED] could provide from employment in the Philippines, the family in the United States would be reduced to living close to or under the poverty level. In addition, [REDACTED] could be faced with the challenges of caring for [REDACTED] without her husband's support. The affidavits provided by [REDACTED] consistently refer to [REDACTED]'s active and caring role as a husband and father, not only in providing financial support, but also in providing the emotional and moral support that his wife and children depend on.

Based on the above evidence, the applicant has established that the cumulative general emotional effect that the family separation would have on [REDACTED] and her children, combined with the increased financial, personal and familial burdens that they would face if the applicant was not admitted to the United States, render the hardship in this case beyond that which is normally experienced in most cases of inadmissibility.

A discounting of the hardship [REDACTED] would face in either the United States or the Philippines if [REDACTED] were refused admission is not appropriate. Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, the AAO finds that the applicant has established that his wife would suffer extreme hardship if his waiver of inadmissibility is denied. In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

The AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The AAO must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *See Matter of Mendez-Morales, supra* at 300 (BIA 1996). (Citations omitted).

The adverse factors in the present case are the applicant's misrepresentation, for which he now seeks a waiver, and periods of unauthorized presence and employment.

The favorable and mitigating factors are the extreme hardship to his wife if he were refused admission, his supportive relationship with his wife and children, and payment of taxes.

The AAO finds that, although the immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.