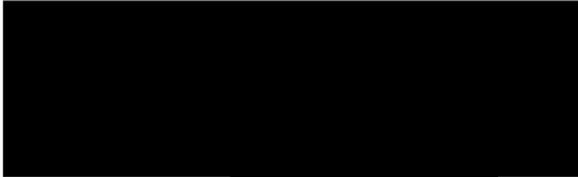




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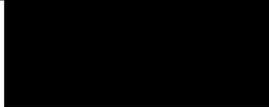
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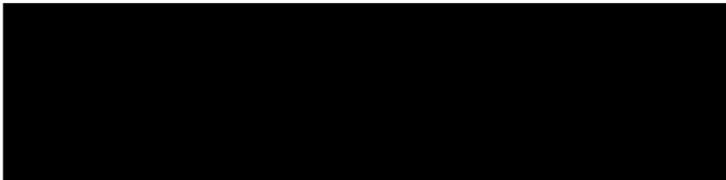
IN RE:

Applicant:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, and 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen husband and father, and permanent resident mother.

The district director concluded 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) accordingly. *Decision of the District Director*, dated April 21, 2004.

On appeal, counsel for the applicant contends that the applicant's husband and parents will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director failed to consider all elements of hardship presented in the record. *Statement from Counsel on Form I-290B*, dated May 12, 2004.

The record contains a statement from counsel on Form I-290B; statements from the applicant, the applicant's husband, the applicant's parents, the applicant's children, and the applicant's stepchildren; a report from a psychotherapist regarding the applicant, the applicant's husband, and the applicant's father; documentation to show that the applicant's husband declared bankruptcy in 1997; medical documentation for the applicant's husband and father; tax records for the applicant's husband; a copy of the applicant's birth certificate; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate; a copy of the applicant's father's naturalization certificate; a copy of the applicant's mother's permanent resident card; copies of the applicant's children's permanent resident cards; copies of documents relating to the applicant's father-in-law's military service; copies of documents relating to a vacation time share owned by the applicant and her husband; evidence of car insurance and a bank account for the applicant and her husband; copies of insurance cards for the applicant, the applicant's husband, and the applicant's parents, and; a Form I-864, Affidavit of Support, executed by the applicant's husband on her behalf. The entire record was reviewed and considered in rendering this decision.

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 record reflects that on or about October 27, 1996 the applicant entered the United States using a fraudulent passport that she purchased. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the 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. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband or parents would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The applicant stated that her previous marriage was troubled and ultimately ended in divorce, causing her significant distress. *Statement from Applicant*, dated March 19, 2003. She explained that she shares a close relationship with her current husband, and that their relationship has been a substantial benefit for her. *Id.* at 4. She provided that her husband has chronic asthma and high blood pressure. *Id.* She indicated that separation from her husband would be difficult for her. *Id.* at 4-5.

The applicant stated that her parents are suffering from age-related health problems, and that she provides assistance for them. *Id.* at 5. Specifically, she indicated that her father had double-bypass surgery and he suffers from hypertension and mild arthritis. *Id.* She provided that her mother had cataract surgery and she suffers from arthritis. *Id.*

The applicant stated that she is close with her adult children who reside in the United States, and that she does not wish to be separated from them. *Id.* at 6.

The applicant's husband stated that his prior marriage ended in divorce, which devastated him emotionally and financially. *Statement from Applicant's Husband*, dated March 19, 2003. He explained that the applicant wishes to care for her parents, so he and the applicant took a residence close to them. *Id.* He stated that he has chronic asthma and the applicant takes care of him when his health fails. *Id.* at 2. He stated that the applicant has encouraged him to be "financially smart," and "when needed, [they] are open to helping each other out financially." *Id.* He provided that he and the applicant intend to buy a home that will accommodate the applicant's parents. *Id.* He expressed that he would experience substantial emotional distress if he is separated from the applicant. *Id.* at 3. The applicant's husband indicated that the economy in the Philippines is poor, with high unemployment, thus they have no future there. *Id.* The applicant's husband states that his mother is elderly and ill, and she requires his presence and emotional support. *Statement from Applicant's Husband*, dated July 14, 2004. The applicant's husband provides that he is close with his many family members in the United States, and he does not wish to be separated from them. *Id.* at 5-6.

The applicant's parents and children submitted statements in which they described hardships they would suffer if the applicant departs the United States. The applicant's parents state that they have two sons and a daughter in the Philippines and a son and daughter in the United States. *Statement from Applicant's Parents*, dated July 17, 2004. The applicant's parents explain that their children in the Philippines are unable to take care of them, and they are estranged from their son in the United States. *Id.* at 1. The applicant's father indicates that, due to his poor health, he and the applicant's mother moved in with their granddaughter. *Id.* at 2. The applicant's parents state that the applicant assists them daily, and they will suffer emotional hardship if they are separated from her. *Id.* The applicant's parents provide that two of their grandchildren reside nearby and help them. *Id.* The applicant's father states that he underwent double-vessel coronary bypass surgery, and he has subsequently had to be hospitalized intermittently. *Id.* The applicant's father provides that the applicant calls him to help him remember to take his medication when he is at work as a part-time security guard. *Id.* The applicant's mother states that the applicant performs tasks for her such as shopping and meal planning. *Id.* at 4.

The applicant's parents indicated that they would be forced to join the applicant abroad if the present waiver application is denied. *Id.* at 5. They expressed that a sudden change of environment from the United States to the Philippines will have a detrimental effect on their health. *Id.* The applicant's parents provide that their economic means are sufficient to sustain them in the United States, but that health care is costly in the Philippines and they would lose a portion of their health coverage. *Id.* The applicant's parents highlight generally poor economic and political conditions in the Philippines. *Id.*

The applicant submitted a report from a psychotherapist regarding her, her husband, and her father. [REDACTED] indicated that he conducted a diagnostic clinical interview with the applicant's family members on February 15, 2003 for the purpose of giving his professional opinion regarding the applicant's waiver application. *Report from* [REDACTED] dated February 23, 2003. Mr. [REDACTED] stated that the

applicant's father expressed that he would suffer emotional hardship if the applicant is compelled to depart the United States. *Id.* at 1-2. Mr. [REDACTED] reported that the applicant's husband indicated he would experience emotional distress if the applicant departs, and that related stress triggers his asthma. *Id.* at 2. He provided that the applicant's husband stated that he will not relocate to the Philippines, and he would be unable to send money to help the applicant. *Id.* Mr. [REDACTED] stated that the applicant indicated that she assists her husband financially, and that she is the only one who cares for her father and mother. *Id.* at 3.

Mr. [REDACTED] observed that the applicant's husband is experiencing serious anxiety and depression as a result of the possibility of separation from the applicant, and that his emotional and physical situation would likely worsen if the applicant departs the United States. *Id.* at 4.

On appeal, counsel contends that the applicant's husband and parents will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director failed to consider all elements of hardship presented in the record. *Statement from Counsel on Form I-290B*, dated May 12, 2004. Counsel adds that the applicant's husband will suffer additional hardship should he relocate to the Philippines with the applicant due to the fact that he would be unable to financially assist his son in the United States including continuing to pay for his college tuition. *Brief in Support of Appeal*, dated August 3, 2004. Counsel reiterates much of the information contained in the statements from the applicant and her family members. *Id.* Counsel notes that family separation alone may serve as a sufficient basis for a finding of extreme hardship. *Id.* at 5. Counsel asserts that the applicant is her parents' sole caregiver. *Id.* at 11.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant and her children will endure if the applicant departs. However, hardship to the applicant or her children is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant and her children will bear significant consequences if the applicant's waiver application is denied, based on the evidence of record only hardship to the applicant's husband and parents may be properly considered in this section 212(i) waiver proceeding.

The applicant has not shown that her husband will experience extreme hardship if he remains in the United States. The applicant indicated that she assists her husband financially, thus she implied that he will experience economic hardship if her waiver application is denied. However, the record lacks a clear account of the applicant's husband's regular household expenses. Further, the record reflects that the applicant's husband earned \$67,210 in 2001, annual compensation well above the 2006 poverty line for a family of two, evaluated as \$13,200. *See Form I-864P, Poverty Guidelines*. It is noted that the applicant's husband stated that "when needed, [he and the applicant] are open to helping each other out financially," implying that he does not require regular economic support from the applicant. *Statement from Applicant's Husband* at 2. Thus, the applicant has not shown that her husband in fact relies on her financial contribution, such that he would be unable to meet his economic needs in her absence. Counsel states that the applicant's husband pays for his son's college tuition, yet the record contains no evidence to support this assertion.

The applicant's husband provided that he suffers from asthma, and the applicant stated that her husband has high blood pressure. However, the record lacks a detailed explanation from a medical professional to explain the severity of the applicant's husband's asthma. The applicant has not submitted medical documentation to show that her husband has high blood pressure or additional physical health problems. It is noted that the record shows that the applicant's husband is able to work, and nothing suggests that he is hindered in

performing daily functions such that he relies on the applicant's assistance. While Mr. [REDACTED] observed that the applicant's husband's asthma is exacerbated by the stress he is enduring regarding the applicant's immigration difficulties, the applicant has not shown that her husband's health complications will significantly impact his ability to meet his needs.

The applicant contends that her husband will experience significant emotional hardship if she is compelled to depart the United States. The applicant's husband expressed that he is close with the applicant, and he does not wish to be separated from her. The report from Mr. [REDACTED] stated that the applicant's husband is currently suffering from serious anxiety and depression, which will likely be exacerbated if the applicant's waiver application is denied. However, the single report is of limited use, as it was conducted for the purpose of this proceeding, and does not represent treatment for a mental health disorder. The applicant has provided no evidence that her husband received or required follow-up evaluation from a mental health professional. While the report is helpful in providing a general understanding of the challenges of the applicant's husband, it does not show that, should the applicant depart the United States, her husband will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

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. The applicant has failed to submit sufficient documentation to establish that her husband will suffer consequences that go beyond those commonly expected of the family members of those deemed inadmissible.

It is noted that the applicant's husband may relocate to the Philippines with the applicant if he chooses. He is a native of the Philippines, and it is likely that he speaks Tagalog. Thus, the record suggests that he would not be forced to adjust to an unfamiliar culture and language. The applicant's husband has identified numerous reasons why he would suffer hardship if he returns to the Philippines, including poor country conditions and health care, a loss of his employment and health insurance, the inability to assist his son economically, and separation from his children and family in the United States. The AAO acknowledges that the applicant's husband would face significant emotional and financial challenges should he relocate to the Philippines. Yet, the applicant's husband stated to Mr. [REDACTED] that he will not return to the Philippines, and as a U.S. citizen, he is not required to do so as a result of the applicant's inadmissibility.

Pursuant to section 212(i)(1) of the Act, in order to establish eligibility for a waiver, an applicant must show that denial of the application "would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien." Section 212(i)(1) of the Act (emphasis added). Accordingly, the applicant must show that all of her husband's options constitute extreme hardship. If the applicant's husband would experience extreme hardship if he relocated abroad, yet he would not experience extreme hardship if he remained in the United States, the applicant would have failed to show that denial of her application "would result in extreme hardship." In such circumstances, should the applicant's husband relocate abroad, it would be his personal choice to endure greater hardship. Thus, in adjudicating an application for a waiver under

section 212(i)(1) of the Act, Citizenship and Immigration Services (CIS) must consider hardships to qualifying relatives relating to both relocating abroad and remaining in the United States. In the present matter, the applicant has failed to show that her husband would endure extreme hardship should he remain in the United States.

The applicant has not shown that her parents will suffer extreme hardship should she depart the United States. The applicant's father underwent coronary bypass surgery in October 1998, yet the record does not reflect that he has suffered debilitating illness since that procedure. *Medical Records of Applicant's Father*. It is noted that the applicant's father works part-time as a security guard, thus the record suggests that he is able to perform at least basic daily tasks. The applicant and her parents have health insurance through different providers, thus the record does not reflect that the applicant's parents require her presence to continue their health coverage. Though counsel asserts that the applicant is her parents' sole caregiver, the applicant's parents indicate that they reside with their granddaughter, not the applicant. Such fact reflects that they do not depend on the applicant for housing or all of their requirements. The applicant's father states that he and his wife have sufficient economic resources to meet their needs, and thus they do not rely on the applicant for financial support. While the AAO acknowledges that the applicant assists her parents and they greatly value her support and companionship, the record does not reflect that they in fact require her assistance.

The applicant's parents express that they will endure emotional hardship if they are separated from the applicant. However, the record does not support that they will experience consequences that are unusual or go beyond those ordinarily expected when a son or daughter is deported. The applicant's parents state that they receive support from two of their grandchildren, and they reside with their granddaughter. Thus, it is evident that they will not be left alone should the applicant depart the United States.

The applicant's parents identify hardships they would face should they relocate to the Philippines, such as poor and costly health care, a loss of health coverage, poor conditions in the Philippines, and an arduous flight from the United States. The AAO acknowledges that the applicant's parents would face significant emotional and financial challenges should they relocate to the Philippines. Yet, as a U.S. citizen and permanent resident, they are not required to do so as a result of the applicant's inadmissibility. The applicant has not established that remaining in the United States constitutes extreme hardship for her parents.

All instances of hardship to the applicant's husband and parents have been considered individually and in aggregate. Based on the foregoing, the applicant has not submitted sufficient documentation to show that her husband or parents will experience extreme hardship if she is compelled to depart the United States. 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(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 appeal will be dismissed.

ORDER: The appeal is dismissed.