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**U.S. Citizenship
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Services**

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[Redacted]

FILE:

Office: NEWARK DISTRICT OFFICE

Date: SEP 22 2006

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. sections 1182(h) and 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed. The application will be denied.

The applicant [REDACTED] is a native and citizen of the Philippines who was found to be inadmissible to the United States under sections 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), for having been convicted of a crime involving moral turpitude (offense committed on February 19, 1991, "conspiracy to bribe a public official"); and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for **having sought to procure admission into the United States or other benefit under the Act by fraud**. Mr. [REDACTED] seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 8, 2003. The decision of the District Director was affirmed on appeal by the AAO. *Decision of the AAO*, dated November 30, 2004.

On motion to reconsider, counsel asserts that the AAO erred in finding Mr. [REDACTED] ineligible for a waiver pursuant to sections 212(h) and 212(i) on the basis that he "failed to demonstrate extreme hardship to his United States Citizen wife and children" and for failing to consider the evidence in the aggregate. *Motion to Reconsider*, dated December 29, 2004.

The AAO grants petitioner's Motion to Reconsider to further clarify that Mr. [REDACTED] has been found inadmissible pursuant to two separate grounds of inadmissibility for which two separate waivers are applicable, both of which require that extreme hardship be shown to a "qualifying relative."¹ As the AAO noted in its prior decision, a qualifying relative for purposes of a 212(h)(1)(B) waiver can be a U.S. citizen or permanent resident spouse, parent *or son or daughter* of the applicant, differing from a section 212(i) waiver, which does not include sons or daughters as qualifying relatives. It is important to note that the applicant needs to meet the requirements of both waivers to overcome both of the applicable bars of inadmissibility; to meet the requirements of the 212(i) waiver, he would need to show extreme hardship to his U.S. citizen spouse, Mrs. [REDACTED] the sole qualifying relative he can claim under that provision of law. Unless Mr. [REDACTED] can show extreme hardship to Mr. [REDACTED] he remains inadmissible under section 212(a)(6)(C)(i) of the Act for having sought admission into the United States by fraud or willful misrepresentation. Upon reconsideration, therefore, this analysis will focus on Mr. [REDACTED] eligibility for a waiver pursuant to section 212(i) of the Act and a review of the hardship faced by his wife if he is not granted this waiver.

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

¹ The AAO notes that the prior decisions of the District Director and the AAO properly referred to section 212(h)(1)(B) of the Act as the waiver provision relevant to Mr. [REDACTED]'s conviction of a crime involving moral turpitude. Due to the passage of time, however, more than 15 years have now passed since the commission of the offense for which Mr. [REDACTED] has been found inadmissible, and the appropriate waiver provision is found at section 212(h)(1)(A)(i) of the Act, 8 U.S.C. § 1182(h)(1)(A)(i). This provision does not require a hardship analysis.

- (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:

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] bribed an official in order to obtain a new I-94, which he subsequently used in order to apply for adjustment of status in 1991. As a result of this fraud, he was found to be inadmissible to the United States under section 212(a)(6)(C) of the Act. Counsel does not contest this finding.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 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, 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, 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. 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).

Hardship the applicant himself experiences upon deportation is not relevant to section 212(i) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives. Hardship suffered by the applicant or the couple's children, however, will be considered insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's U.S. citizen wife.

U.S. courts have 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 appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to Mrs. [REDACTED] must be established in the event that she accompanies her husband to the Philippines or in the event that she remains in the United States, as she is not required to reside outside of the United States, nor are the couple's children, based on the denial of the applicant's waiver request.

In summary, the record in this case indicates that Mr. [REDACTED] was born in Manila in 1959 and came to the United States in 1987; his wife was born in Manila in 1960 and came to the United States in 1983; they met in the United States in 1987 and were married in 1990. They have three U.S. citizen children, all of whom are in school and doing well. Mrs. [REDACTED] mother is a U.S. citizen; she was born in 1930, currently resides with Mr. and Mrs. [REDACTED]; and has serious health problems. The record is silent as to the presence of other family ties to U.S. citizens or lawful permanent residents in the United States or family ties in the Philippines. Mr. [REDACTED] and his wife hold a mortgage on their house and are both employed. Mr. [REDACTED] is an accountant, and his wife has been employed as a bookkeeper for the last ten years with [REDACTED] the family receives health insurance through her employment. Wage and Tax Statements for 2001, the most recent year in the record, indicate that [REDACTED] earned approximately \$28,000 and his wife earned approximately \$56,000. Statements from [REDACTED] his wife and children indicate a strong nuclear family based on caring relationships. A psychosocial evaluation in the record indicates that although both Mr. [REDACTED] and his wife graduated from college in the Philippines, their families struggled with poverty, and the couple does not want their children to face similar hardships. The record does not contain evidence of country conditions in the Philippines.

The AAO recognizes that the [REDACTED] family would suffer economic detriment and their wage-earning potential would be diminished if they both moved to the Philippines, and that the standard of living, including health benefits, for the couple and their children would be reduced. The BIA has generally not found financial hardship alone to amount to extreme hardship. *Matter of Cervantes-Gonzalez, supra*, at 568 (citations omitted). It is one of the relevant factors to be considered, however, in the analysis of extreme hardship; and in this case, Mrs. [REDACTED] would also be separated from her elderly mother and have to make alternate arrangements for her care, as she is currently part of their household. In addition, Mrs. [REDACTED] would have to leave her home and long-term job and the life she has built up over more than 20 years in the United States. She would also have to uproot her children from their schools and life in the United States, the

only life they have known, something that she has indicated would cause her great pain. Though any one of these factors may not amount to extreme hardship, when considered in the aggregate, they lead to a conclusion that Mrs. [REDACTED] would indeed suffer extreme hardship if she chose to move to the Philippines with her children to avoid separation from Mr. [REDACTED].

To avoid these hardships, however, Mrs. [REDACTED] could decide to remain in the United States with her children. In that case, she would maintain her employment, health benefits for herself and her children, and continue to reside in her home with her mother. It is clear that she and the couple's three children will suffer financially without the income from her husband's current employment; however, Mrs. [REDACTED] earns a good income and there is no evidence in the record that her husband would be unable to find work in the Philippines or be unable to contribute to the family's support. He would face the challenge of finding employment, but his education, a college degree from the Philippines and accounting skills, are assets in that regard. Mrs. [REDACTED] would be faced with the challenge of caring for their children without the assistance of her husband and coping with other lifestyle changes that a reduced income would require. It is clear that if she chooses to remain in the United States, she and their children will also suffer personally and emotionally because they do not have the companionship and care of Mr. [REDACTED]. These are hardships normally associated with family separation. There is no evidence in the record, however, to show additional hardship Mrs. [REDACTED] would suffer if the applicant were denied a waiver of inadmissibility. Her situation, based on the record and considered in the aggregate, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mrs. [REDACTED] faces extreme hardship if Mr. [REDACTED] is denied a waiver of inadmissibility and she chooses to remain in the United States with their children. 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that Mr. [REDACTED] deportation would cause to his spouse and children). In addition *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS, supra*, at 468.

The AAO recognizes that Mrs. [REDACTED] will endure hardship as a result of separation from Mrs. Ramirez. However, in this case, the record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of removal to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion for reconsideration is granted and the appeal will be dismissed.

ORDER: The motion is granted. The AAO decision of November 30, 2004 dismissing the appeal is affirmed. The application is denied.