

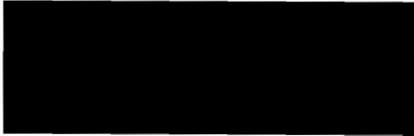
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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: SAN FRANCISCO, CA Date: **AUG 05 2008**

IN RE: Applicant: [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:



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 District Director, San Francisco, California, denied the Form I-601, 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). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 40-year-old native and citizen of the Philippines who was found 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). The applicant is the beneficiary of an approved relative petition filed on her behalf by her U.S. citizen spouse. She presently seeks a waiver of inadmissibility in order to adjust her status to lawful permanent resident and remain in the United States.

The district director determined that the applicant was inadmissible and that the denial of a waiver would not result in extreme hardship to her U.S. citizen spouse or lawful permanent resident mother. The waiver application was denied accordingly. On appeal, the applicant, through counsel, maintains that the director failed to adequately consider her family's circumstances. *See* Form I-290B, Notice of Appeal to the AAO. Specifically, the applicant notes the limited employment opportunities in the Philippines, that she has been her husband's and parents' support, and that her separation from her husband would cause him hardship. *Id.* No additional evidence accompanies the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant to be inadmissible based on her fraudulent use of a different identity to gain admission to the United States. The applicant admits that she gained admission to the United States using a different name and does not dispute the inadmissibility finding. *See* Statement by Applicant, dated September 16, 2003. The AAO therefore affirms the district director's determination of inadmissibility. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .”

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. Hardship to the applicant herself is not a permissible consideration under the statute.

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 alien has established extreme hardship to a qualifying relative. 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).

The applicant’s spouse, [REDACTED], is a 33-year old, native of the Philippines. He became a U.S. citizen upon his naturalization in August 2002. The couple was married in Reno, Nevada in June 2002. The couple resides with the applicant’s mother, a lawful permanent resident. The applicant claims that her mother has suffered strokes, and has been diagnosed with diabetes. The record contains copies of the applicant’s mother’s medical records for the years 1992 to 1999. The Form I-601, Application for Waiver of Grounds of Inadmissibility, reflects that the applicant’s lawful permanent resident brother also resides with the applicant. The applicant’s sister, a U.S. citizen, also resides in Oakland, California. The applicant claims that her inadmissibility would result in extreme emotional hardship to her spouse. The applicant further claims that she cares for her sick mother and that her departure would cause her extreme hardship.

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 or parent would face extreme hardship if the applicant is denied the waiver. The record does not contain any evidence establishing that the applicant’s mother’s medical condition is so severe, chronic, life-threatening or unusual that it requires the applicant’s care, or that her mother cannot be adequately cared for by the applicant’s siblings. The record does not contain any evidence that the applicant’s family is dependent on her for financial support.

Although the AAO recognizes that separation from the applicant would cause hardship to her family, such hardship is common to all individuals in the applicant’s circumstances and does not rise to the level of “extreme.” While the AAO has carefully considered the impact of separation resulting from the applicant’s inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that “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. The uprooting of family, the separation from friends, and

other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse or mother due to the potential separation from the applicant rises to the level of extreme. The record does not establish that the applicant's inadmissibility would result in anything other than the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a spouse or child is removed from the United States.

The AAO further notes the applicant's spouse's reluctance to relocate to the Philippines. The statute does not require the applicant's spouse to relocate if she is removed from the United States. Moreover, the claim that employment opportunities in the Philippines are limited does not amount to extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that the "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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). 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 or lawful permanent resident mother as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. 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.