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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

HZ

JUL 29 2008

FILE: [REDACTED] Office: BALTIMORE, MD Date:

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:

[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, Baltimore, Maryland, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality 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 39-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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen, and the beneficiary of an approved relative petition filed on her behalf by her 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. The waiver application was denied accordingly. On appeal, the applicant, through counsel, maintains that the director failed to adequately consider her hardship claim and the evidence submitted. *See* Form I-290B, Notice of Appeal to the AAO. Specifically, the applicant notes her husband's medical condition, mental health, the recent purchase of the couple's home, and the limited opportunities for her husband in the Philippines. *See* Appeal Brief.

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 admission to the United States under a different name. The applicant admits that she gained admission to the United States using a different name and does not dispute the inadmissibility finding. 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:

(i) (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, Edgar Silos, is a 35-year old, native-born U.S. citizen. The applicant met her husband in 2003 and they were married on November 16, 2005. The couple purchased their home in October 2007. The record contains, in relevant part, statements from the applicant and her spouse, documents relating to the purchase of their home, the applicant’s spouse’s medical records, a psychologist’s evaluation, utility bills, and income tax records. The evidence in the record reflects that the applicant’s spouse has received medical treatment for psoriasis and that he claims to have hypertension. The applicant’s spouse was evaluated by a psychologist who opined that he suffers from anxiety and that he may lapse into clinical depression should his wife be removed from the United States. The applicant claims that her husband’s psoriasis would be exacerbated in the tropical climate of the Philippines, and that he could not receive adequate medical treatment there. The applicant’s spouse’s family resides in Maryland, and he claims to have no ties to the Philippines. He also claims that he would face limited employment opportunities in the Philippines. He states that should he decide to remain in the United States, the separation from the applicant would result in extreme emotional and financial hardship. The record reflects that he is well-employed by the U.S. Department of Defense, earning approximately \$25,000 plus benefits. The record includes the applicant’s spouse’s income tax records, but the AAO notes that the applicant’s income does not appear to be listed.

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 is denied the waiver. The record does not contain any evidence establishing that the applicant’s spouse’s medical condition could not be adequately treated in the Philippines, or that it would be exacerbated because of the climate there. The record also does not establish that the applicant’s medical or mental health condition is life-

threatening, chronic, unusual or severe. As noted above, the applicant's spouse is well-employed, and does not appear to depend on the applicant for financial support. The record indicates that the applicant's spouse has health insurance through his employment. The record further indicates that the couple only recently purchased their home, and that they did so with the applicant's mother-in-law's assistance. The record establishes that the applicant's spouse has family in the United States, residing nearby. Although the AAO recognizes that the applicant's absence could affect the couple's plans for the future, the circumstances described by the applicant and her spouse are the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a spouse is removed from the United States.

The hardship claims made by the applicant and her spouse are common to all individuals in the applicant's circumstances and do 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 Shoostary 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 due to the potential separation from the applicant rises to the level of extreme.

The AAO further notes the applicant's spouse's reluctance to relocate to the Philippines. In this regard, the AAO first notes that the statute does not require the applicant's spouse to relocate if her husband is removed from the United States. The AAO also notes that limited employment opportunities or poor economic conditions in the Philippines, his lack of language skills or family ties, are common hardships faced by individuals in the applicant's circumstances and do not necessarily rise to the level of "extreme." *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "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 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th 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 also notes that in evaluating a claim of hardship "[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is legally in this country." *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).

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. § 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.