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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date: **JUL 31 2008**

IN RE: [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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California. The matter 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 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), for having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The waiver application was denied accordingly. *See Decision of District Director* dated July 13, 2004.

On appeal, counsel states that Citizenship and Immigration Services (“CIS”) erred in failing to fully consider all of the facts and evidence in the case, including evidence of extreme physical, economic and emotional hardship to the applicant’s wife. Specifically, counsel asserts that the applicant’s wife will suffer extreme hardship due to her emotional state, financial status, and health if the applicant is removed from the United States. *See Brief in Support of Appeal* at 3. Counsel states that if the applicant’s wife relocates to the Philippines with the applicant, she “will be forced to leave the life she has built in the U.S. for nearly twenty-five years” and will also be separated from her close family members in the United States. *Brief* at 4. Counsel additionally asserts that relocating to the Philippines or remaining in the United States without the applicant would cause the applicant’s wife emotional and physical hardship due to serious medical and psychological problems, including severe hypertension and major depression. *Brief* at 5-6. Counsel further maintains that the applicant's wife would suffer serious economic hardship if the applicant is removed because she would be unable to pay the family’s expenses without the applicant’s income. *Brief* at 9-10. Counsel also states that the social and political conditions would expose the applicant’s wife to “grave dangers” if she relocated to the Philippines and she would suffer financially due to a standard of living that is significantly lower in the Philippines than in the United States. *Brief* at 8, 10. Counsel submitted the following documentation in support of the waiver and appeal: Declarations from the applicant and his wife, letters from a psychologist and a physician who are treating the applicant’s wife for depression and other health problems, declarations from friends and family members, copies of the applicant’s marriage certificate and his daughter’s birth certificate, photographs of the applicant with his family, income tax returns and earnings statements for the applicant and his wife, a list of the applicant's family’s monthly expenses, copies of bank statement, copies of automobile insurance and registration documents, and reports on conditions in the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 AAO notes that the record contains references to the hardship that the applicant's U.S. Citizen child would suffer if he is removed to the Philippines. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-three year-old native and citizen of the Philippines who has resided in the United States since September 1998, when he entered using a fraudulent Philippines passport and U.S. visa issued in the name [REDACTED]. The applicant's wife is a forty-eight year-old native of the Philippines and naturalized U.S. Citizen who has resided in the United States since 1980. The applicant and his wife live in Salida, California with their daughter, who is now eight years old.

The district director found that although the applicant's wife stated that she is fearful for herself and her daughter if they relocate to the Philippines and also believes she and the applicant will have no employment or health insurance there, the decision of whether to relocate to the Philippines is her own personal choice. *Decision of District Director* at 2. The director further concluded that the hardships claimed by the applicant's wife if the applicant were removed, including financial difficulties and separation from family members in the United States, are insufficient to establish extreme hardship "absent any more extreme impacts." *Id.* The director further concluded that the evidence was insufficient to support the applicant's wife's claim that she has been having panic attacks and fears she might suffer a stroke as a result of the applicant's deportation. *Decision of District Director* at 2-3.

Counsel asserts that the applicant's wife would suffer extreme emotional and physical hardship if the applicant were removed from the United States, and in support of this assertion submits letters from a psychologist who diagnosed her as suffering from depression and anxiety and a physician treating her for hypertension. The letter from the psychologist, who had been treating the applicant's wife for symptoms of severe depression and anxiety for about three months, states,

[P]rior to the onset of possible deportation, she was functioning at a high level . . . However, when I saw her in March, she was experiencing the following symptoms of depression: fatigue; difficulty concentrating; insomnia; crying spells; appetite loss; isolation; anhedonia, and continuous worry bout [sic] her family's future. . . . I referred her to her family doctor for a medication evaluation for psychotropic medication. *See letter from [REDACTED] M.S., dated June 30, 2003, at 1-2.*

The letter further states that the applicant's wife is in a fragile emotional state, and she would likely have "enormous difficulty in adapting to such a backward culture" if she relocated to the Philippines. *Id.* at 2. The therapist additionally states that if the applicant's wife remained in the United States and had to live as a single parent and face financial burdens as well as loneliness, there are "serious doubts as to her capacity to withstand such big changes in her life." *Id.* at 3. In addition, a letter from a physician indicates that the applicant's wife has been diagnosed with hypertension and started taking medications for the condition, "which tends to be a chronic condition and is associated with increased risk for cardiovascular disease," in August 2002. *See letter from [REDACTED] dated July 1, 2003.*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's wife's condition is so serious that she would suffer extreme hardship if she were to relocate to the Philippines. The record contains a brief letter from her doctor that states she is on medication for hypertension, which tends to be a chronic

condition, but provides no detail concerning any current treatment or medications or the type of care needed in the future. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, counsel did not submit any information on the availability of medical care in the Philippines to support an assertion that the applicant's wife would not have access to adequate care there.

The letter from the psychologist indicates that due to her concerns over the applicant's immigration status, the applicant's wife is experiencing symptoms of depression and anxiety and is receiving psychotherapy. The AAO notes that although the treating psychologist states that she referred the applicant's wife for a "medication evaluation," there is no evidence on the record that any medications were prescribed. The letter further indicates that the applicant's wife had been receiving psychotherapy for about three months, but does not state how many times the applicant's wife had visited the therapist during that time period. The evidence on the record is insufficient to establish extreme emotional hardship if the applicant were removed from the United States. Although the record indicates that the applicant's wife has experienced and received treatment for symptoms of depression and anxiety, there is insufficient information on the record to establish that these symptoms are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress over the prospect of being separated from her husband or from family members in the United States is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Counsel asserts that the applicant's wife would suffer financial hardship if she remained in the United States without the applicant because she would not be able to afford a baby sitter and could not pay the family's expenses without the applicant's income. *See Brief* at 9-10. In support of this assertion counsel submitted tax returns for the applicant and his wife, bank statements, and a list of their monthly expenses. In her affidavit, the applicant's wife states,

I'm working Monday to Friday from 9:15 a.m. to 5:45 p.m. Erwin is the one who's taking care of Angelica during the daytime. I cannot afford a sitter if Erwin leaves the U.S. I'm only making \$9.00 an hour. There's no way I can afford to pay for a babysitter. I also have other bills to pay. We want to give her a good education but I need help from Erwin to accomplish this.

It appears that any economic hardship or decline in standard of living that the applicant's spouse might experience in the Philippines would be a common result of deportation. The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO further notes that the applicant's daughter is now eight years old and would therefore be attending school and would not require a full-time babysitter.

Counsel maintains that the applicant's wife would also suffer financial hardship if she relocated to the Philippines because of the significantly lower standard of living and states that she would have difficulty finding "adequately paying" employment there. *Brief* at 10. Counsel further states that if she relocates to the Philippines, the applicant's wife "will be forced to leave the life that she has built in the U.S. for nearly twenty-five years and separate from many close family members, all of whom are U.S. citizens." *Brief* at 4-5. The evidence does not establish that the applicant's wife, a native of the Philippines who resided there until she was twenty years old, would not be able to find work comparable to her employment in the United States. *See Affidavit of [REDACTED]* dated June 25, 2003, at 1. Further, as noted above, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. It also appears that the separation of the applicant's spouse from her family members in the United States would be the type of unfortunate, but expected, hardship that occurs whenever a spouse is removed from the United States and, when combined with any economic detriment he would experience, would constitute common results of deportation or exclusion. *See 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).

Counsel additionally asserts that the applicant's wife would "endure severe personal hardship because of the current political and civil unrest in the Philippines." *Brief* at 7. In support of this assertion counsel submitted information on conditions in the Philippines indicating that various terrorist organizations operate in the country, "kidnapping and killing tourists and local residents and often using children as soldiers and noncombatants." *Id.*, citing U.S. Department of State, *Country Reports on Human Rights Practices- 2003*. The report also refers to excessive force and human rights violations by the government, including illegal detention and killing of innocent civilians, in its efforts to combat terrorist groups. *See Country Reports on Human Rights Practices* at 8. In her affidavit the applicant's wife also states that as a U.S. Citizen she is afraid of terrorism in the Philippines, but there is no evidence on the record to support an assertion that she would be a target of such groups. The AAO notes that terrorist groups are reported to operate in some regions of the country, but there is no indication that the applicant's wife would be in any specific danger if she returned to Manila, where she was born. *See Affidavit of Minerva Y. Latina* at 1.

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The emotional and financial difficulties that the applicant's wife would suffer appear to be the type of hardships that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the

level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.