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**U.S. Citizenship  
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**JUN 19 2008**

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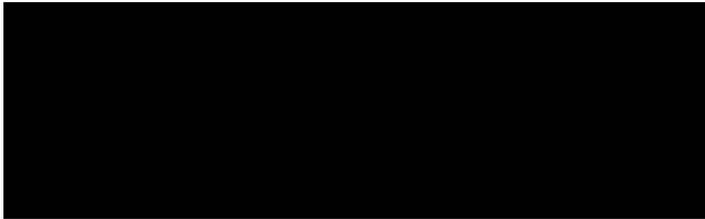
Applicant:



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, Los Angeles, California, 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 admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated November 14, 2005. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that the applicant obtained a valid B-2 visa and entered the United States by presenting a passport in the name of someone else. Based on the evidence in the record, the applicant gained admission into the United States by willfully misrepresenting a material fact, his identity. He is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

It is noted that the district director stated that the applicant's birth certificate was registered on October 14, 1997 and showed his date of birth as August 24, 1943, which is contrary to August 25, 1947, the date of birth listed by the applicant in various documents such as the asylum application. The district director also relayed that the applicant failed to inform his prior spouse that he had been a priest, and during a Citizenship and Immigration Service investigation denied that he had two children.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

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 to the applicant and her child are not a consideration under the

statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his stepdaughters will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's wife must be established in the event that she remains in the United States without the applicant, and in the alternative, that she joins the applicant to live in the Philippines. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel states that the letter by \_\_\_\_\_ conveyed that the applicant's wife had treatment for larynx cancer and is being followed at regular intervals by her doctor. Counsel indicates that the applicant's wife has high blood pressure, high cholesterol, osteoporosis, and depression; and counsel states that the applicant's departure will deteriorate his wife's mental health and medical problems, which will affect her daily health and future. Counsel states that the applicant's wife will need her husband's love and support during treatment for larynx cancer and will have emotional and personal hardships if he were relocated to the Philippines. Counsel indicates that the psychological evaluation by \_\_\_\_\_ conveyed that the applicant's wife has depression and suicidal thoughts at the thought of losing her husband. Counsel states that the applicant's wife has lived in the United States for 31 years, that her four daughters and three grandchildren live in the United States, and that she will not be able to survive living in the United States without her husband or in the Philippines with him. Counsel indicates that the applicant's wife has been employed as a billing officer in the accounting department of an entertainment post-production film company for ten years, and that as a 56-year-old woman with health problems she will not find such employment in the

Philippines. Counsel states that the applicant's husband indicated that it was his belief as well as his parents that he was born in 1947, and that because he was born in a poor province neither he nor his parents had need of birth certificates. Counsel states that the date of the applicant's birth has no legal significance bearing on the waiver application. Counsel further states that the applicant made a personal decision to remain discreet about his past as an ordained Catholic priest when he married his first wife and that when the applicant married his wife he believed his church superiors had removed him from his position as a priest. Counsel states that the fact that the applicant has two illegitimate children should not be the focus of the waiver application and indicates that the applicant is deserving of a favorable exercise of discretion.

In his affidavit the applicant stated that his parents always told him he was born in 1947. He conveyed that he did not tell his prior spouse of being a priest because his bishop had already released him from his priestly faculties. He stated that while he lived with a girlfriend in 1973 during a sabbatical leave from the church, he fathered two children. He stated that the relationship with his girlfriend ended when the Philippines had a revolution in 1983 and he came to the United States to escape it. He stated that he sent the children money when he arrived in the United States, but eventually lost contact with them when they moved here. He stated that he does not remember denying the existence of his children during the interview.

The psychological evaluation by [REDACTED] which is dated April 2, 2006, stated that before the applicant's wife married the applicant she had been in an abusive marriage for approximately 20 years. [REDACTED] stated that the applicant and his wife, who is now 57 years old, lived together prior to marrying in 1997. Ms. [REDACTED] conveyed that the applicant's wife stated that she has four adult daughters and grandchildren who live in Northern California, and she and her husband take long automobile trips from Southern California to visit them. [REDACTED] indicated that the applicant's wife stated that she will never drive alone to visit her daughters and cannot afford to fly to visit them, and therefore will not see them regularly if the applicant moved to the Philippines. [REDACTED] stated that the applicant's wife indicated that she cannot imagine life without her husband yet cannot move to the Philippines because she will lose her medical benefits, her job, and retirement in the United States. [REDACTED] conveyed that the applicant's wife stated that in the Philippines there is no work for older people. [REDACTED] stated that the tests conducted show the applicant's wife values relationships; tends to be dependent on others for day-to-day functioning; and appears to have difficulty making decisions without assurance from others; needs someone to assume responsibility for many areas of functioning in her life; has problems initiating any activity without the support of her primary companion; and feels uncomfortable or helpless when alone because of exaggerated fears of not being able to care for herself. [REDACTED] conveyed that the applicant's wife "may be at risk for suicide given a number of items she endorsed on the MCMI-III."

[REDACTED] made the following diagnoses: Major Depression, Recurrent, Severe, Without Psychotic Features Dysthymic Disorder; Dependent Personality Obsessive Compulsive Traits; Osteoporosis; If husband must return to Philippines: Isolation, loss of only significant supportive companion, loss of financial contribution, loss of companion in old age, loss of home (high rent), loss of frequent visits to daughters and grandchildren. [REDACTED]s conveyed that given the unique personality structure of the applicant's wife, she will be devastated if her husband returns to the Philippines without her.

The January 24, 2006 affidavit by the applicant's wife conveyed that she takes medication for high blood pressure and does not take prescribed medication for high cholesterol because of side effects. She stated that she has lost weight, has depression and anxiety attacks, and feels lost and afraid thinking about her husband's

immigration problems. She stated that she has been in the United States for 31 years and cannot return to the Philippines because her entire family is here. She stated that her parents are deceased and that she has no immediate relatives in the Philippines. She stated that she is 56 years old and her husband is 62 years old and that they are too old to start a life in the Philippines. She stated that her husband has lived in the United States for 15 years. She conveyed that the Philippine government cuts off medical insurance once a person is 65 years old. She stated that her job as a senior billing clerk does not exist in the Philippines and that she would not qualify for work because of her age. She stated that she and her husband would starve in the Philippines. She indicated that the departure of her husband would be like cutting off her hand because she needs him for everything, including driving.

The February 13, 2006 letter by the applicant's wife conveyed that she feels that she must choose between living with her husband in the Philippines and daughters and grandchildren in the United States. She stated that they will not be able to obtain employment in the Philippines because she is 56 years old and her husband is 62 years old. She stated that she does not know where or she will live if her husband is taken away.

The letter dated January 16, 2006 by [REDACTED] conveyed that the cholesterol numbers of the applicant's wife were a little high, but better than the last testing. The Glendale MRI Institute DXA bone densitometry report dated November 16, 2005, indicated that the applicant's wife is considered osteopenic according to World Health Organization criteria. The November 28, 2005 letter by [REDACTED], M.D., indicated that the applicant's wife's bone scan shows that she has osteoporosis and her T score in the spine and neck show she has osteopenia. The March 12, 2008 letter by [REDACTED] conveyed that the applicant's wife had treatment for larynx cancer and is being followed at regular intervals. His letter of January 4, 2007 conveyed that the applicant's wife was diagnosed with early stage cancer of the larynx, which was complicated by thyroid nodules, and that she underwent radiation therapy in early 2007. He stated that the pathology showed "moderately well differentiated squamous cell carcinoma of the larynx."

The certification dated February 23, 2000 [REDACTED] stated that the applicant's wife earns \$12.50 per hour with VDI Multimedia Corporation. The letter dated February 24, 2000 by [REDACTED] stated that the applicant earned \$2,201.36 each month after taxes and deductions as a garage manager.

The record also contains letters from the applicant's friends and stepdaughter attesting to his character and his close relationship with his wife.

In rendering this decision, the AAO will carefully consider all of the evidence in the record.

The record is sufficient to establish that the applicant's wife would experience extreme hardship if she were to join the applicant to live in the Philippines.

The conditions in the country where the applicant's wife would live if she joined her husband are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The record reflects that the applicant's 59-year-old wife was treated for early stage larynx cancer in 2007 for which her doctor is following her progress. The applicant's wife claims to have no immediate relatives in the Philippines and to have lived in the United States for 31 years. She further claims that she will lose her medical benefits and will not find employment in the Philippines on account of her health problems and age. The AAO finds that the combination of hardship factors, particularly her recent diagnosis of cancer, when considered in the aggregate, establishes that the applicant's wife would experience extreme hardship if she were to join her husband in the Philippines.

However, the AAO finds that the record fails to establish extreme hardship to the applicant's wife in the event that she remains in the United States without the applicant.

With regard to the submitted psychological evaluation of the applicant's wife, although the input of a mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depression or anxiety disorder experienced by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview and administered tests, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering Ms. [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

With regard to family separation, courts in the United States have stated that "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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the

applicant's wife, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shoostary, Perez, and Sullivan, supra.*

indicated that the applicant's wife would experience the loss of her home and of the applicant's financial contribution if she remained in the United States without her husband. The AAO finds that the submitted documentation of employment letters, wage statements, and income tax records is not sufficient to establish that the applicant's wife would experience extreme economic hardship if she remained in the United States without her husband. Although the record reflects that the applicant's wife earned \$12.50 per hour in 2000, no documentation has been submitted to show that her income is not enough to meet household expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted that the applicant has daughters living in the United States who are gainfully employed in professions and no documentation has been provided to establish that they are unable to financially assist their mother.

In considering the hardship factors that were raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The applicant has established that his wife would experience extreme hardship if she were to join him to live in the Philippines. In the final analysis, however, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions has not been met so as to warrant a finding of extreme hardship in the event that the applicant's wife were to remain in the United States without him. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.