

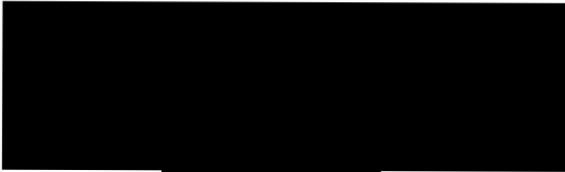
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Avenue N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



*H-2*

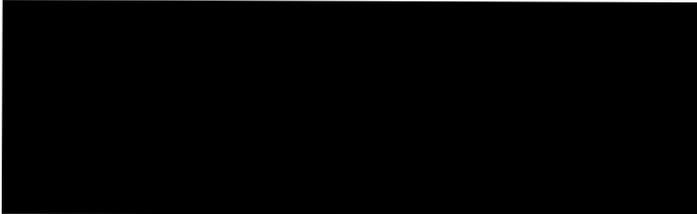
FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: **NOV 04 2008**

IN RE: 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.

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, Los Angeles, California, and 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 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting a passport and visa in someone else's name. The record indicates that the applicant is married to a naturalized United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated October 15, 2004.

On appeal, the applicant, through counsel, asserts that the Service "erred in denying the I-601...[The Service] erred in concluding that [the applicant's husband] will not suffer extreme hardship if his wife is not granted adjustment and forced to return to the Philippines." *Form I-290B*, filed November 12, 2004.

The record includes, but is not limited to, counsel's brief, declarations from the applicant's husband, and medical documents for the applicant's husband's mother. 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, that:

- (i) 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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that the applicant initially entered the United States on April 21, 1998, by presenting a passport and visa in someone else's name. On March 7, 2001, the applicant's naturalized United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Form I-601. On October 15, 2004, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative. On December 28, 2004, the District Director denied the applicant's Form I-485. On April 11, 2005, the District Director vacated the adverse decision on the Form I-485 and reopened the application.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen husband. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's United States citizen husband will suffer extreme hardship if the applicant is removed to the Philippines. Counsel states that the applicant and her husband "have no prospects of procuring employment in the Philippines because wages are very low and jobs are difficult to obtain." *Appeal Brief*, page 6, dated December 9, 2004. Counsel states that if the applicant's husband joins the applicant in the Philippines, "he will be separated from his elderly mother and two sisters." *Id.* at 10. The applicant's husband states his mother suffers from diabetes, high blood pressure and a heart condition, and she resides with him and the applicant so that they can take care of her. See *declaration of* [REDACTED]

(*Supplemental*), dated December 8, 2004. The AAO notes that there was nothing from a doctor indicating exactly what the applicant's husband's mother's medical issues are, any prognosis or what assistance is needed and/or given by the applicant's husband. Additionally, the AAO notes that it has not been established that the applicant's husband's sisters cannot help care for their elderly mother. The applicant's husband states he gives his mother "several hundred dollars a month." *Id.* The applicant's husband states that when he lived in the Philippines he worked as a tricycle driver, even though he has a degree in management. *Id.* The AAO notes that the applicant's husband has been working in the United States for many years and it has not been established that he has no transferable skills that would aid him in obtaining a job in the Philippines to help with the household expenses and to help with his mother's expenses. Additionally, the AAO notes that the applicant's husband is a native of the Philippines, he speaks the Tagalog language, is familiar with Filipino culture, and it has not been established that they have no family ties to the Philippines. *See Appeal Brief, supra* at 11. In fact, counsel states that the applicant's family resides in the Philippines. *Id.* at 7. Counsel states that the applicant's husband is "particularly concerned about the deleterious effects a separation from either parent will have on his" children. *Id.* at 9. The AAO notes that it has not been established that the applicant's children, who are 4 and 9 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of the Philippines. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanies her to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, in close proximity to his family, maintaining his employment, and with access to adequate health care. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states that the applicant cares for the children and his mother while he works; however, the AAO notes that it has not been established that the applicant and her husband have no family in the area that can help care for the children and his elderly mother. Further, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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 *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's United States citizen husband will endure hardship as a result of separation from the applicant. However, his situation if he 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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(a)(6)(C)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.