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20 Massachusetts Ave. N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]

Office: LOS ANGELES, CA

Date: **SEP 09 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:

[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 that reads "Robert P. Wiemann".

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 having procured entry into the United States by fraud or willful misrepresentation; the record indicates that the applicant entered the United States in December 1991 using a passport and visa containing an assumed name. The applicant is married to a U.S. citizen and 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 his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 7, 2006.

In support of the waiver request, counsel submits a brief, dated March 23, 2006. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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 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 waiver of the bar to admission under section 212(i) of the Act resulting from a 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. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and any hardship to the applicant and/or the applicant's spouse's relatives cannot be considered, except as it may affect the applicant's 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*, 21 I&N Dec. 296 (BIA 1996).

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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The applicant’s U.S. citizen spouse states that she will suffer physical and emotional hardship were the applicant removed from the United States. As stated by the applicant’s spouse,

.I am also suffering from my own numerous medical problems....

I am currently required to attend regular follow-up visits and must strictly follow my medical regiment.... I know that it would be very difficult for me to control my medical problems and care for my parents, [redacted] [the applicant’s] grandparents and his sister and her family without my husband’s assistance. Therefore, it would cause me great personal and emotional hardships to be separated from [redacted], if he is forced to relocate to the Philippines....

...there is no doubt that we...would suffer terribly because we are closely attached to one another. A permanent separation would result in extreme psychological and emotional damage...because I cannot envision my life without my husband....

is my heart and sole companion. We have always been of great support to each other, emotionally, spiritually, morally, physically and financially. We are dependent upon one another. I can't function without him....

*Supplemental Affidavit of* [REDACTED] dated July 9, 2004.

To begin, although the record indicates that the applicant's spouse suffers from numerous medical conditions, no current letter has been provided by the applicant's spouse's treating physician that outlines, in detail, what specific assistance the applicant's spouse's needs from her husband, and what hardships she will face with respect to said medical conditions were the applicant not present in the United States.

Moreover, no objective evidence is provided to corroborate the applicant's spouse's statements regarding her mental state and her concerns with respect to having to care for her relatives, such as statements from a professional in the mental health field documenting that the applicant's spouse is suffering or will suffer from a mental health condition, due to the applicant's immigration situation and the consequences of his removal as they relate to the care of her relatives.

In addition, it has not been established that the applicant's spouse's situation is extreme as she is able to maintain gainful employment since October 1998, as documented by her financial documentation and the letter provided by her employer on June 17, 2002 confirming the applicant's spouse's employment as a Loan Specialist. *See Letter from* [REDACTED] *VP of Finance, Pacific Resource Credit Union, dated June 17, 2002.*

Finally, it has not been established that it would be an extreme hardship for the applicant's spouse to visit the applicant, whether in the Philippines, both the applicant and his spouse's home country, or in any other country to which the applicant relocates, on a regular basis.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation 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 based on the record. 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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 notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. As stated by the applicant's U.S. citizen spouse,

...The Philippines is a very financially depressed country. It is extremely difficult for people living in Manila to find a job.... Currently I help take care of my family, financially, by working as a Loan Specialist.... And, my husband currently works at Sears Auto Center as a technician.... I know it would be impossible for us to find comparable jobs in the Philippines because such jobs are difficult to find without connections, and we have no connections to any employment based networks in the Philippines.... Furthermore, if we had to return to the Philippines, it would be impossible for us to live on the meager income we would earn there....

I am especially concerned about the effect my departure would have on my parents.... My father, [REDACTED], has numerous medical problems.... In August 2001 my father suffered a severe heart attack, for which he was forced to undergo a percutaneous transluminal angioplasty to clear the blockage in his artery. Although his condition is currently stable, he still suffers from chest pains, and his blood sugar levels remain uncontrolled despite the use of medications.... As a result of his numerous health problems, my father is required to attend regular follow-up visits with his physician;

My mother, [REDACTED], who is a U.S. citizen, has diabetes, arthritis in her knee, high cholesterol, and asthma. And, her treating physician has currently placed her under various medications....

I see my parents everyday. I also take them to their many doctor appointments and help care for them. I am also the oldest sibling; my brothers and sisters are still very young. I have a 14-year-old sister, [REDACTED] and a 11-year-old brother [REDACTED]. My parents and siblings rely on me for both financial and emotional support. Therefore, it would cause me great emotional and personal hardship to be away from my family. I know they need me very much. If I am away from them, I would no longer be able to help them....

...In addition to my own family, I am concerned over the effect our departure will have on [REDACTED] [the applicant's] family;

...His grandfather...has prostate cancer, diabetes and high blood pressure. His grandmother...had a hip replacement in April 2002 and also suffers from high blood pressure. Recently, both of Gilbert's grandparents underwent cataract surgery on both eyes.... [REDACTED] and I are very close to his grandparents.

loves them very much, and helps them financially and emotionally. He visits them very often. Therefore, it would cause me great hardship to see [REDACTED] separated from his parents.

In addition to his grandparents, [REDACTED] also has a sister, [REDACTED]... Her husband...has a head tumor. He had an operation approximately seven (7) years ago to remove the tumor... Unfortunately, last month he underwent an MRI which indicated that his tumor has returned. He was informed that if he requires a second operation, he may lose his eyesight. [REDACTED]'s husband's medical condition is very hard to deal with alone.... Therefore, [REDACTED] and I have made it a point to visit [REDACTED] and her family on a daily basis... Currently, our families both live in the same apartment complex.... it would cause me great hardship to be separated from my husband's family when they need us the most....

*Supra* at 2-4.

To begin, no documentation has been provided to establish that the applicant and/or his spouse would be unable to obtain gainful employment in the Philippines, their home country, ensuring adequate health coverage to treat the applicant's spouse's medical conditions. Moreover, no documentation has been provided that details the applicant's spouse's parents' and in-laws' current medical and financial situation, their short and long-term medical plans, the gravity of their medical conditions, and what assistance they need from the applicant's spouse in particular. The AAO notes that the physician letters provided by counsel are over four years old and merely list the medical conditions suffered by the applicant's spouse's family members and that regular follow-ups and maintenance medications are required. As such, the record fails to establish that the applicant's spouse's parents' and/or in-laws' continued medical care and survival directly correlate to the applicant's spouse's physical presence in the United States.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.