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U.S. Citizenship  
and Immigration  
Services

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FILE: [redacted] Office: LOS ANGELES Date: JAN - 2 2009

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, CA, 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The district director concluded that the applicant 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 September 23, 2006.

On appeal, counsel for the applicant contends that the applicant's wife, children, and mother will experience hardship if the present waiver application is denied. *Brief from Counsel*, dated November 16, 2006.

The record contains briefs from counsel; birth certificates for the applicant and his children; a copy of the applicant's mother's permanent resident card; statements from the applicant's wife and mother; a psychological evaluation of the applicant's wife; medical documentation for the applicant's wife; documentation on conditions in the Philippines; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate; documentation relating to the applicant's entry to the United States, and; documentation relating to the applicant's conviction for a misdemeanor count of forging an official seal in California. 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.

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.

The record reflects that in or about December 1992 that the applicant entered the United States using the passport of another individual in which his photo had been substituted for the original. Accordingly, the applicant entered the United States by misrepresenting a material fact (his true identity.) Accordingly, the applicant 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). The applicant does not contest his inadmissibility on appeal.<sup>1</sup>

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 the alien experiences upon deportation is not a direct concern in section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife or mother. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if

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<sup>1</sup> It is noted that the applicant was convicted of one misdemeanor count of forging an official seal under section 472 of the California Penal Code. A conviction under section 472 of the California Penal Code may result in a maximum sentence of one year of imprisonment. California Penal Code § 472; California Penal Code § 473. The applicant received a sentence of two years probation and a total fine of \$1,485. Accordingly, his conviction falls under the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act and he is not inadmissible for having been convicted of a crime involving moral turpitude.

not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s wife or mother would possibly remain in the United States if the applicant departs. Separation of family will be considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that the applicant’s wife, children, and mother will experience hardship if the present waiver application is denied. *Brief from Counsel* at 3-6. Counsel asserts that the applicant’s wife will experience hardship in the applicant’s absence due to the need to care for their two young children alone. *Id.* at 3. Counsel explains that the applicant is the primary caregiver for his and his wife’s two children, and that the applicant’s wife earns the majority of their income. *Id.* at 4. Counsel indicates that the applicant works at night and cares for his children during the day. *Id.* Counsel provides that the applicant sometimes cares for his mother. *Id.* Counsel asserts that the applicant caring for his children during the day is what allows his household to meet their economic needs. *Id.* Counsel contends that otherwise childcare expenses would constitute a large burden and limit the time the applicant’s children would spend with their parents. *Id.*

Counsel states that, should the present waiver application be denied, the resulting family separation would be permanent. *Id.* at 5. Counsel notes that the applicant’s wife may relocate to the Philippines, but that she would be compelled to relinquish her employment, educational opportunities for their children, medical insurance, retirement benefits, and general advantages of residence in the United States. *Id.* Counsel asserts that the applicant’s wife will experience extreme hardship whether she remains in the United States or relocates abroad. *Id.* at 6.

The applicant’s wife asserted that she cannot return to the Philippines because she has a serious skin condition which results from the climate there. *Statement from the Applicant’s Wife*, dated November 18, 2004. She stated that her condition is more manageable in the United States. *Id.* at 1. She indicated that she has been the sole income provider for her family since March 2001. *Id.* She stated that she is not comfortable caring for her children alone. *Id.*

The applicant’s wife explained that the applicant takes care of their childcare and household needs, and that she depends on him. *Statement from Applicant’s Wife*, undated. She stated that the applicant and their son share a close bond, and that their son would suffer emotionally if separated from the applicant. *Id.* at 1. She stated that she is close with the applicant, and that they wish to keep their family together. *Id.* at 1-2.

The applicant submitted an evaluation of the emotional effects his departure would have on his wife, conducted by [REDACTED]. Dr. [REDACTED] provided that he evaluated the applicant’s wife in a single 90 minute session. *Report from [REDACTED]*, dated November 16, 2004. [REDACTED] recounted the applicant’s wife’s statements about her frustration in caring for her son. *Id.* at 2. He indicated that the applicant’s wife has “very limited frustration tolerance in respect to her son” and that she “must be obeyed and appreciated, otherwise she becomes rejecting in a most hostile way then becomes overwhelmed with guilt and shame.” *Id.* [REDACTED] posited that if the applicant’s wife is compelled to care for their son alone, there would be the likelihood of “escalations of hostile

rejections and more shaming spankings, and the burden of guilt and shame for [the applicant's wife] will be extreme, really crushing." *Id.* at 3.

The applicant's mother explained that she is a citizen and national of the Philippines, but that she has resided in the United States since 1992. *Statement from the Applicant's Mother*, undated. She indicated that she has five children including the applicant, and that two reside in the Philippines and three reside in the United States. *Id.* at 1. She explained that she is close with the applicant and she sees him every week. *Id.* She stated that she is under medical care for "high blood pressure and the like," and that the applicant takes her to the doctor and encourages her. *Id.* She provided that she suffers from osteoarthritis which causes mobility problems, and that the applicant and her daughter assist her. *Id.* at 1-2. She explained that her daughter cannot help her full-time. *Id.* at 2. She stated that the applicant helps her with financial needs, including her doctor visits and medications. *Id.* She indicated that she is reaching the point where she can no longer travel to the Philippines, thus if the applicant is compelled to depart the United States she may never see him again. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should he be compelled to depart the United States.

Counsel contends that the applicant's permanent resident mother will experience extreme hardship if the present waiver application is denied. However, while the applicant's mother contends that the applicant assists her, the applicant has not shown by a preponderance of the evidence that his sister, who also assists his mother, is unable to provide ample support. The applicant's mother stated that the applicant gives her economic assistance, yet the applicant has not submitted any documentation to support this assertion. It is noted that the applicant's mother indicated that the applicant was unemployed as of the date that she issued her statement. The applicant has not submitted any documentation to show that he works in the United States. The applicant's mother asserted that she has health problems that increase her need for assistance, yet the applicant has not provided any documentation to reflect his mother's health status, such as an evaluation from a medical professional.

While the AAO acknowledges that the applicant's mother wishes to continue to see the applicant regularly, the applicant has not shown that emotional hardship to his mother resulting from separation can be distinguished from that ordinarily expected and experienced by close family members separated as a result of inadmissibility. U.S. 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, *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. That applicant has not shown that, should his mother remain in the United States without him, she would experience extreme hardship.

The applicant has not shown that his mother would experience extreme hardship should she relocate to the Philippines to be with the applicant. While she indicated that she is reaching a point where she is unable to travel to the Philippines, the applicant has not submitted any evidence to support this assertion, such as an evaluation from a medical professional. The applicant's mother explained that she wishes to remain in the United States, yet she stated that she has two other children in the Philippines, thus it is evident that she has some close family ties in the country. The applicant has not explained or shown that his mother has other ties to the United States, such as real property or community ties. Thus, the applicant has not shown that his mother would endure unusual hardship should she choose to relocate to the Philippines.

Based on the foregoing, the applicant has not shown that his mother would experience extreme hardship should he be compelled to depart the United States. Section 212(i)(1) of the Act.

The applicant has presented explanation of hardships to his two sons. Hardship to an applicant's children is not a direct concern in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. The AAO will consider the effects that the applicant's sons' hardship will have on his wife.

The applicant's wife explained that the applicant cares for their children, and that she is not comfortable doing it alone. The report from [REDACTED] supports that the applicant's wife has emotional difficulty caring for her children. Yet, it is noted that the applicant has not shown that his wife would be compelled to care for their children in his absence, as the applicant has not asserted or shown that his children must remain in the United States with his wife rather than join him in the Philippines. Nor has the applicant shown that his wife would be unable to care for their children in the United States without his assistance. The applicant's wife works, and she indicated that she earned an income of \$40,000 per year as of her statement on November 18, 2004. The applicant has not indicated his wife's current salary, or provided an account of his household's regular expenses such that the AAO can evaluate the possibility of his wife obtaining childcare services while she works. Nor has the applicant explained whether his wife has family members or others who are able and willing to assist her with childcare. The AAO acknowledges the applicant's wife's emotional challenges in caring for her children, as presented in the report from [REDACTED]. Yet, the applicant has not established that his wife has child caring challenges that are significantly different or more severe than those commonly experienced by parents, particular those acting as a single parent due to the inadmissibility of a spouse.

The applicant presented explanation that his children will experience hardship if separated from him, largely due to the fact that the applicant acts as a caregiver. However, it is noted that counsel states that the applicant works evenings, thus it is evident that he is not the only caregiver for his children. It is reasonable that the applicant's sons will suffer emotional consequences if separated from the applicant, and that such emotional hardship would impact the applicant's wife. However, the applicant has not established that any emotional hardship to his sons would elevate his wife's emotional challenges to extreme hardship. As noted above, the applicant has not shown that his sons would be unable to join him in the Philippines should the family choose.

The applicant has not asserted or shown that his wife would suffer economic challenges should she remain in the United States without the applicant.

Based on the foregoing, the applicant has not shown that his wife would experience extreme hardship should she remain in the United States without him.

The applicant has not established that his wife would experience extreme hardship should she relocate to the Philippines to maintain family unity. The applicant's wife contends that she has a serious skin condition that is exacerbated by conditions in the Philippines. The applicant provided a brief medical document to show that his wife received treatment for eczema on her hands and feet. However, the document noted that the applicant's wife has a history of eczema. The document does not state an opinion that conditions in the Philippines specifically affected the applicant's wife's eczema. The applicant has not provided any other medical documentation for his wife. Thus, the applicant has not submitted sufficient documentation to show by a preponderance of the evidence that returning to the Philippines would create a significant health hazard for his wife.

The applicant's wife indicated that she would be compelled to relinquish her employment in the United States should she return to the Philippines. The AAO acknowledges that the applicant's wife would require a change in her employment. Yet, such consequences are common when an individual relocates due to the inadmissibility of a spouse. While the applicant's wife stated that she would be compelled to forego medical and retirement benefits, the applicant has not submitted any documentation to show that his wife currently enjoys such benefits in the United States. The applicant's wife is a native and citizen of the Philippines, thus it is evident that she would not endure the challenges of adapting to a new language and culture should she return there. The applicant has not provided an account of his family's economic resources, such as savings, investments, or real property, thus the applicant has not shown that his wife would be unable to finance a move to the Philippines should she choose. It is noted that the applicant's wife would not face the challenges of caring for her children alone should she join the applicant abroad.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife would experience extreme hardship should she relocate to the Philippines to maintain family unity. *Section 212(i)(1) of the Act.*

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his wife or mother, should he be prohibited from remaining in the United States,

considered in aggregate, rise to the level of extreme hardship. 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(a)(6)(C) 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.