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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: LOS ANGELES, CA

Date:

JAN 27 2009

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.

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, 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 August 28, 2006.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States, including emotional and economic consequences as well as health and safety risks. *Brief from Counsel*, dated September 26, 2006. Counsel asserts that the district director failed to assess all factors of hardship or articulate reasons for denying the application. *Id.* at 2.

The record contains a brief from counsel in support of the appeal; statements from the applicant, the applicant's husband, and the applicant's relatives; a psychological evaluation for the applicant; documentation in connection with the applicant's ownership of a home; documentation of the applicant's and her husband's income, expenses, and taxes; documentation on conditions in the Philippines; a copy of the applicant's birth certificate; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate, and; documentation in connection with the applicant's entry to the United States using a false identity. 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 on or about June 8, 1990 the applicant entered the United States using a false identity. *Sworn Statement from Applicant*, dated April 8, 2003. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (her 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 her inadmissibility on appeal.

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 applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board 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 (9th 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 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 husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States, including emotional and economic consequences as well as health and safety risks. *Brief from Counsel* at 6. Counsel asserts that the district director failed to assess all factors of hardship or articulate reasons for denying the application. *Id.* at 2. Counsel references an evaluation of the applicant's husband conducted by a

licensed psychologist to support that the applicant's husband will experience emotional hardship should the present waiver application be denied. *Id.* at 2-3. Counsel states that the applicant's husband does not earn sufficient income to meet his economic needs alone, thus he will experience significant financial hardship if the applicant departs the United States. *Id.* at 4.

Counsel asserts that the applicant's husband will endure extreme hardship if he returns to the Philippines with the applicant. *Id.* Counsel states that the applicant's husband has close relatives in the United States, including his mother, two brothers, and sister, and that he would suffer emotional hardship if he is separated from them. *Id.* Counsel contends that the applicant's husband will experience significant economic hardship should he relocate to the Philippines, as he has not resided there for years and it is difficult to find employment. *Id.* at 5. Counsel further states that returning to the Philippines poses a risk to the applicant's husband's safety. *Id.*

The applicant's husband stated that he met the applicant in June 1994, they began dating in 1995, and they were married on October 17, 1998. *Statement from Applicant's Husband*, at 1-2, dated June 24, 2003. He indicated that the applicant takes care of him and makes sure he eats right. *Id.* at 2. He stated that he and the applicant share a special bond, and that he would suffer emotional hardship if they are separated. *Id.* The applicant's husband further explained that the applicant helps take care of his mother, including taking her to medical appointments. *Id.* He asserted that he would experience financial difficulty in the applicant's absence, as they purchased a car and his salary alone is not sufficient to make the necessary payments. *Id.* He provided that he and the applicant have future plans to purchase a home and save funds to have children. *Id.*

The applicant provided a copy of a report from a licensed psychologist, [REDACTED], evaluating her husband's mental health. [REDACTED] stated that the applicant's husband is experiencing emotional distress over the prospect of the applicant departing the United States. *Report from [REDACTED]*, dated May 5, 2003. She indicated that the applicant's husband depends on the applicant for emotional support, financial support, and transportation as he cannot drive. *Id.* at 1. [REDACTED] stated that the applicant's husband cannot bear the idea of being separated from the applicant, and that he is distraught and desperate. *Id.* at 2. [REDACTED] asserted that these factors indicate a strong likelihood of post-traumatic stress. *Id.*

Upon review, the applicant has not established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. The applicant's husband contends that he will experience significant economic hardship should the applicant be compelled to depart the United States, as he lacks sufficient income to meet his needs alone. The applicant provided documentation to show that she and her husband purchased a home, and that the monthly mortgage payments total approximately \$2850.¹ The record reflects that the applicant's husband earned approximately \$37,000 in 2005. It is evident that the applicant's husband would have difficulty paying the mortgage alone and meet his other financial needs and obligations. Yet, the applicant has not indicated whether her husband has other economic resources with which to meet his expenses or if

¹ It is noted that the mortgage statements are addressed to the applicant, and do not include her husband's name. However, the applicant and her husband are married, and she has shown by a preponderance of the evidence that they reside together. Thus, it is reasonable that the applicant's husband would intend to continue to reside in the home and make monthly mortgage payments should he remain in the United States without the applicant.

other arrangements could be made regarding the house such as selling or renting it. The applicant has not shown that she would be unable to secure employment in the Philippines, thus the AAO is unable to determine whether she would be self-sufficient or have a surplus to assist her husband. However, the record supports that the applicant's husband would have to make lifestyle changes to adjust to less income which constitutes hardship.

The report from [REDACTED] describes emotional and physical consequences that the applicant's husband is experiencing due to the prospect of the applicant departing the United States. However, although the input of a mental health professional is respected, the report reflects that it was generated after a single session with the applicant's husband. It does not represent an ongoing relationship between the applicant's husband and [REDACTED]. Nor does it state or show that the applicant's husband required or received follow-up care. Thus, while the report is given due consideration, it is of limited value in making a determination of extreme hardship. The applicant has not shown that her husband will face emotional hardship that is greater than that commonly expected when spouses are separated due to inadmissibility.

The applicant's husband stated that he cannot drive, and [REDACTED] noted that the applicant's husband depends on the applicant for transportation. While the applicant has not explained why her husband does not drive, or shown that he is unable to take measures to begin driving, it is evident that he would experience inconvenience should he lose the applicant's assistance with transportation.

Based on the foregoing, the applicant has not shown that her husband would experience extreme hardship should he remain in the United States without her. In addition, the applicant has not shown that her husband would experience extreme hardship should he relocate to the Philippines to maintain family unity.

The applicant's husband may relocate to the Philippines if he chooses. Should he relocate with the applicant, he would not face family separation. It is noted that the report from [REDACTED] and the negative consequences she described resulted from the applicant's husband's fear of separation, which he would not encounter should he remain with the applicant.

As a native and citizen of the Philippines, it is evident that he would not face the challenges of adapting to an unfamiliar language or culture. Counsel contends that the applicant's husband would face a security risk in the Philippines. Yet, the applicant has not submitted sufficient documentation to show that her husband would face an unusual threat to his safety. The AAO observes that human rights abuses and crimes have been documented in the Philippines, yet the applicant has not shown that her husband would be compelled to reside in an area where such incidents are common, or that he is involved in activity that renders him a target. The applicant has not shown that her husband, as a U.S. citizen, would be identified or selected for harm.

The applicant's husband indicated that it would be difficult to obtain employment in the Philippines, suggesting that he would face economic hardship should he return there. However, the applicant has not shown that she and her husband would be unable to obtain employment there to meet their economic needs. It is evident that the applicant and her husband would incur expenses associated with relocating abroad, including the need to sell or rent their residence. Yet, the applicant has not

shown that her husband lacks adequate resources to move abroad or that he would experience extreme economic consequences in the Philippines.

Counsel states that the applicant's husband has close relatives in the United States, including his mother, two brothers, and sister, and that he would suffer emotional hardship if he is separated from them. Yet, the applicant has not submitted evidence to show that her husband's mother, brothers, or sisters reside in the United States, such as copies of their immigration-related documents and evidence of their relationship to the applicant's husband. It is noted that 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.

All factors of hardship to the applicant's husband have been considered individually and in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he return to the Philippines to maintain family unity. Thus, the applicant has not established that denial of the present waiver application would result in extreme hardship to her husband. Section 212(i) of the Act.

The record contains letters from two other individuals, [REDACTED] and [REDACTED], in which they express that they will suffer emotional consequences should the applicant depart the United States. Yet, the applicant has not submitted evidence to show that they are qualifying relatives such that their hardship may serve as a basis for a waiver under section 212(i) of the Act.

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) 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.