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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: LOS ANGELES, CA Date: JUL 28 2009

IN RE: [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.

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, 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation. The applicant is married to a naturalized 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 with his wife and children 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 31, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. , indicating that they were married on November 3, 2001; a declaration from Ms. ; copies of birth certificates of the couple's two U.S. citizen daughters; a letter from s doctor; copies of financial and tax documents; a copy of naturalization certificate; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

Section 212(i) provides:

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

The record shows, and counsel concedes, that the applicant entered the United States in March 1995, using a fraudulent name, . Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 under 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.

In this case, the applicant's wife, [redacted] states that she works as a Certified Nursing Assistant and earns $8.50 per hour. She states she works at night so that she can care for the couple's two daughters, who are currently six and eight years old. [redacted] states her husband also works as a Certified Nursing Assistant and earns $9.00 per hour. She contends that their family shares a house with her brother because it is the only way they can afford to live in California. [redacted] states that her income, combined with her husband's income, is the only way they can provide for their family. She states she could not survive on one income alone. Furthermore, [redacted] states she is under a doctor's care for asthma, gastroesophageal reflux disease, and allergic rhinitis. She contends her asthma is related to her allergic rhinitis and that her asthma tends to flare up during the winter, requiring the use of an inhaler. She states she takes medicine two or three times per week for her reflux problem. Moreover, [redacted] who was born in the Philippines, claims she would be emotionally devastated if her husband's waiver application were denied. She states that when she lived in the Philippines, she worked as a clinical instructor at a college, earning approximately $200 per month. She states that any work she could find in the Philippines would not pay very much. In addition, [redacted] states that her entire family, including her mother and three siblings, lives in the United States as either U.S. citizens or lawful permanent residents. She contends she would not take her daughters to the Philippines if her husband's application is denied because it would be "robbing them" of the opportunities available in the United States. *Declaration of* [redacted], undated.

A letter from [redacted] physician states that [redacted] "is being treated for Asthma, Gastroesophageal Reflux Disease and Allergic Rhinitis [which are] controlled with medications." *Letter from* [redacted] dated December 28, 2006.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver application being denied.

The AAO recognizes that will endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the family's circumstances. However, their situation, if decides to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding medical issues, there is insufficient evidence in the record to show that the denial of her husband's waiver application would cause her extreme hardship. Ms. does not describe in detail how her health conditions affect her daily life and she does not claim she needs any assistance because of them. In addition, although the letter from Ms. doctor confirms that she has asthma, reflux, and allergic rhinitis for which she takes medications, the letter does not discuss the prognosis or severity of health conditions. Moreover, there is no allegation that the medications requires would be difficult to obtain abroad. Similarly, there is no allegation her conditions could not be adequately treated in the Philippines. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

With respect to financial hardship claim, despite her contention that she cannot survive on one income alone, the record shows that in 2005, only the applicant was employed. *Declaration from* , dated September 13, 2006 (declaring under oath that she was not employed for the year 2005); *2005 U.S. Individual Income Tax Return (Form 1040A)* (indicating her occupation as "unemployed"). There is no information in the record addressing why was unemployed in 2005, no claim that it was extreme hardship for their family to live on a single income, and no explanation of how the family met its expenses during that year, therefore undercutting the applicant's financial hardship claim. In addition, although the record contains copies of the couple's bank account statement, a car insurance statement, and an application to rent a house for $1,150 per month, there is insufficient information addressing the family's regular monthly expenses. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec.

810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

In addition, there is insufficient evidence to show that would experience extreme hardship if she went back to the Phlippines to avoid the hardship of separation. The record indicates that was born in the Philippines and lived there until she was approximately thirty-three years old. According to her declaration, she was employed as a clinical instructor at a college in the Philippines. *Declaration of* *supra.* Significantly, does not contend she would be unable to find employment in the Philippines, but rather, she claims only that "[a]ny work that [she] could find in the Phlippines would not pay very much." *Id.* Furthermore, although claims her entire family now lives in the United States, *id.*, according to her Biographic Information form in the record, her father continues to live in the Philippines. *Biographic Information (Form G-325A)*, signed by Ms. on September 13, 2006.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 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.