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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

H2

FILE: [redacted] Office: SAN FRANCISCO, CA Date: MAR 03 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, San Francisco, 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 entered the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and has two U.S. citizen children.[1] She 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 with her family.

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 Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 28, 2006.

On appeal, counsel contends that the applicant has demonstrated that her removal would result in extreme hardship to her U.S. citizen spouse and children. Counsel also asserts that the applicant has demonstrated that she merits a favorable exercise of discretion, as required to grant her a waiver of inadmissibility. *Counsel's brief*, dated May 17, 2006.

The record includes, but is not limited to, a brief submitted by counsel on appeal; statements from the applicant and her spouse, dated May 17, 2006; a letter from the applicant's landlord, dated April 10, 2006; copies of utility, telephone and insurance policy bills for the applicant and his spouse; the applicant's grade report and tuition statement from Nursing Care Providers (NCP) Vocational School; and a letter from [redacted] dated April 5, 2006, with a medical bill for the applicant's younger child. 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

[1] Although the AAO notes that the applicant indicates that her parents are lawful permanent residents, the record contains no documentary evidence to establish that this is the case.

> 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 the applicant at the time of her interview for adjustment of status testified that she had used a fraudulent passport in the name of ' to obtain a nonimmigrant visa and entered the United States on March 28, 1989 using this fraudulent documentation. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212(i).

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 an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(i) waiver proceedings except to the extent that it results in hardship to a qualifying relative. The record shows that the applicant married a U.S. citizen. Therefore, relevant hardship in the present case is the hardship suffered by the applicant's husband.

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 provides a list of factors relevant in determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

> 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). 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in the Philippines or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel contends that the applicant's spouse will suffer extreme hardship as a result of relocating to the Philippines. Counsel asserts that the applicant's spouse maintains stable employment in the United States and provides financial support to his two sons. Counsel indicates that the applicant's spouse has been living in the United States since 1990. Counsel states that under the poor economic conditions in the Philippines, the applicant's spouse will find it very difficult to obtain a job to support and maintain his family, and to pay the medical bills for himself and his sons who need medical care. Counsel also states that, if the applicant's spouse and children relocate to the Philippines, they will be at risk from terrorist groups. In support of his assertions, counsel submits statements from the applicant and her spouse and cites the Background Notes for the Philippines from the U.S. Department of State's website, the 2004 Country Report on Human Right Practices in the Philippines and the February 18, 2005 Public Announcement made by the U.S. Department of State regarding the Philippines. The applicant's spouse states that he suffers from carpal tunnel syndrome and severe allergies. The applicant states that her elder son suffers from recurrent nosebleeds and her younger son from asthma, recurrent episodes of bronchitis, ear infections and pneumonia. Counsel contends that the applicant's spouse and his sons will find it difficult to relocate to the Philippines and that the younger son's health will be at risk. The applicant's spouse states that neither he nor his sons will be able to receive their current level of health care if they relocate.

The AAO notes that, in support of the claims made by the applicant's spouse, the record includes an April 5, 2006 letter from [redacted] indicating that the applicant's younger son has been treated since March 2003 for several ear infections, an episode of pneumonia, and recurrent episodes of asthma and bronchitis. While, as previously noted, the applicant's son is not a qualifying relative for the purposes of a 212(i) proceeding, the AAO acknowledges that his son's medical conditions may create additional stress for the applicant's spouse should he relocate to the Philippines. It also observes that counsel's claims regarding security conditions in the Philippines are supported by the travel warning issued by the U.S. Department of State on February 13, 2008 to U.S. citizens contemplating travel to the Philippines. The warning advises U.S. citizens that they may encounter risks to their safety and security anywhere in the Philippines. When considered in the aggregate and in light of the Cervantes-Gonzalez factors previously cited, the AAO finds the evidence of record to establish that the applicant's spouse will suffer extreme hardship if he relocates to the Philippines with the applicant.

Counsel also contends that the applicant's spouse will suffer extreme hardship if he remains in the United States following the applicant's removal. He asserts that that the family would be devastated by the separation and that the applicant's spouse will struggle financially and have a difficult time providing adequate care for his children. In his May 17, 2006 statement, the applicant's spouse states that he is currently making about $1,500 per month and his family's household and living expenses total $2,662 monthly, including $900 for rent, $500 for food and groceries, $130 for utilities, $200 for medical insurance, $240 for gas, $100 for carpool expenses for children, $42 for educational fund, $150 for children's allowances and daily expenses, and $300 for church offerings/donations. The applicant's spouse asserts that if the applicant were removed and he remained in the United States with their two sons, the stress and burden of raising and supporting the

family would rest solely on him. He states that he would struggle financially because half of the family's income will no longer be available, and it will be extremely difficult for the applicant to find a job and earn a decent living in the Philippines.

Counsel submits documentary evidence to support these assertions, including a letter from , dated April 10, 2006. In the letter, certifies that the applicant's family has been her tenant since 1994 and currently pays $900 a month in rent. The record also contains statements for cable video and internet service at $60 per month, for electricity at $48 per month, for telephone service at average of $37.29 per month and for auto insurance at $496 for six months (approximately $83 per month). While the AAO notes these expenses, it does not find the record to contain any documentary evidence to establish that the applicant would be unable to find a job in the Philippines and earn money to help support her family from outside the United States. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse also contends that he and his whole family would be emotionally devastated if they remained in the United States following the applicant's removal. He states that not only would his sons, one of whom is only five years old (now eight years old), be torn from the love and care of their mother, but the marital bond between him and the applicant would also be severed. He also asserts that he would have a difficult time providing adequate care for his children who have health problems because he would be occupied working and trying to earn enough money to support the family. While the AAO acknowledges that the applicant's younger son has been medically treated for certain conditions, it does not find the record to establish that the applicant's spouse would be unable to care for him as a single parent. Although letter reports that the applicant's younger son has been treated for ear infections, pneumonia, asthma and bronchitis, the AAO, without further documentary evidence, cannot determine that the requirements of caring for the applicant's younger son would cause the applicant's spouse to suffer extreme hardship.

The AAO is mindful of and sensitive to the applicant's concerns about maintaining her family and the hardship her spouse will endure hardship if they are separated. However, the record does not contain evidence that distinguishes the applicant's spouse's situation, if he remains in the United States, from that of other individuals separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); and *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980)(severance of ties does not constitute extreme hardship).

In the final analysis, the AAO finds that the applicant has failed to establish that her spouse would experience hardships over and above the normal economic and social disruptions created by removal so as to warrant a finding of extreme hardship. As the applicant is statutorily ineligible for relief under 212(i) of the Act, 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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.