

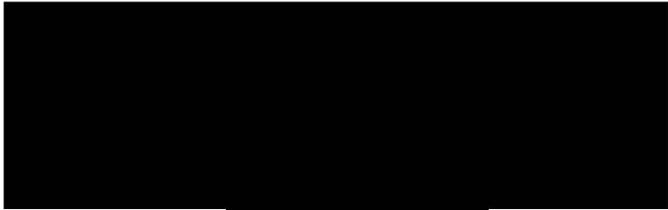
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Avenue, Rm. A3000  
Washington, DC 20529-2090

**PUBLIC COPY**

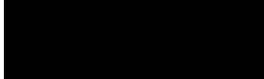


**U.S. Citizenship  
and Immigration  
Services**



H2

FILE:



Office: LOS ANGELES (SANTA ANA)

Date **MAR 10 2009**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 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).

A handwritten signature in cursive script that reads "Michael Shumway".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the instant waiver application that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen, the son of a U.S. citizen, the brother of a U.S. citizen, and the father of two U.S. citizen sons. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his family members.

On June 19, 2002 the applicant filed a previous Form I-601, Application for Waiver of Grounds of Inadmissibility, that was denied on September 29, 2003. The applicant appealed and the AAO dismissed the appeal on March 23, 2005. Today's decision does not address that previous Form I-601 application, but the Form I-601 filed on April 14, 2006, and appealed on October 13, 2006, which matter remains on appeal. All of the evidence in the record, however, including that submitted in connection with the previous application and appeal, will be considered.

In the instant matter, the district director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the application. On appeal counsel contended that extreme hardship had, in fact, been demonstrated. Counsel also provided additional evidence.

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.

The record contains a sworn statement that the applicant made to a USCIS officer on April 12, 2006. The applicant stated that, on June 3, 1992, he entered the United States with a passport issued to another person, which his father had purchased for approximately \$8,000. The record contains a photocopy of a passport issued by the Philippines to [REDACTED]. The record also contains a B-2 visitor's visa issued to [REDACTED]. That visa is stamped to indicate entry on June 3, 1992 with a period of authorized stay expiring on December 3, 1992.

The AAO finds that the applicant knowingly presented a passport issued to another person to obtain a visa and to enter the United States by misrepresenting that it was issued to him. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) provides, in pertinent part:

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 . . .”

A waiver of inadmissibility under section 212(i) OR 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, or to his children or his brother, is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s spouse and mother are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The record contains various references to harm that will be occasioned to the applicant’s children if he is removed from the United States. The applicant also listed his brother on the Form I-601 application as a relative through whom he claims eligibility for a waiver. Section 212(i) of the Act provides that a waiver of inadmissibility under that section is applicable where the applicant establishes extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant’s child and siblings. In the present case, the applicant’s wife and his mother are the only qualifying relatives under the statute, and the only relatives for whom the hardship determination is permissible.

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 nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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).

In support of the instant application, counsel submitted a monthly budget for the applicant's household. That budget was submitted with a previous brief dated November 24, 2003, which refers to that budget. It must, therefore, have been prepared prior to that date. That budget indicates that the applicant and his wife have fixed expenses of \$5,225 per month or \$62,700 annually. That figure includes a mortgage payment of \$2,331.96 per month to amortize a principal balance of almost \$240,000, as shown on a mortgage statement dated September 30, 2003 pertinent to their house at [REDACTED] in Cypress, California.

In an affidavit dated April 4, 2006 the applicant's brother stated,

[The applicant and his family] are moving to a newer 5 bedroom house in Placentia this month and their monthly amortization is quite substantial. I don't think that [the applicant's wife] can make ends meet . . . . Without [the applicant's] income, they will loose everything they had work for all this years.

[Errors in the original]

A letter dated June 2, 2006 from counsel states that the applicant and his wife no longer live at that Cypress, California address, but have moved to Placentia, California. Although counsel's statements are not evidence, *per se*, that statement does appear to confirm that the applicant and his wife purchased a home in Placentia sometime after April 4, 2006. The amount of their current mortgage balance and monthly payment, if any, is unknown to the AAO. The budget provided is, therefore, no longer directly relevant to the applicant's circumstances.

An April 15, 2002 statement from Mercedes-Benz Credit Corporation shows a monthly payment of \$500 due on a 2001 Mercedes Benz ML320 SUV. Another document from Mercedes-Benz Credit Corporation indicates that expense is for the lease of the vehicle, rather than a purchase. The applicant's budget indicates that his family has three cars.

A letter dated March 20, 2002 from [REDACTED] of [REDACTED] in Anaheim, California states that the applicant's wife then earned \$21 per hour working 40 hours per week for that company, and that she has worked for that company since November 23, 1999. That wage equals \$43,680 annually. A letter dated March 14, 2006, from [REDACTED] of Westminster, California, states that the applicant was then earning \$24.70 working 32 hours per week for that company. That wage equals \$41,100.80 annually. In a statement dated March 29, 2006, the applicant's wife stated that she is a vocational nurse earning approximately \$44,000 annually.

The record contains a 2000 Form W-2 Wage and Tax Statement (W-2 form) issued to the applicant's wife by an employer showing wages of \$38,005.66. The record contains 2001 W-2 forms issued to the applicant's wife by two different employers. The sum of the wages shown on that W-2 form is

\$31,960.84. The record contains 2004 W-2 forms issued to the applicant's wife by three different employers. The sum of the amounts on those W-2 forms is \$43,498.27.

Although the record contains a 2000 W-2 form, it was issued to the applicant by [REDACTED] of Santa Ana, California, rather than by [REDACTED] of Anaheim, California. The record contains no 2000 W-2 form from [REDACTED], notwithstanding that the 2002 letter from [REDACTED] indicated that it had employed her since 1999.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, *absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies*, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In a previous sworn statement dated May 30, 2002 the applicant's wife stated, ". . . our monthly income is just enough to cover our daily expenses," [sic] and that she is unable to pay off the family's existing debt without her husband's income. She further stated that, although her mother-in-law lives with her and the applicant, the mother-in-law's help would be insufficient if the applicant were not present, and that the applicant's wife would be forced to quit her job if her husband returned to the Philippines because she "would find it extremely difficult to find someone who would be able to provide [the child of the applicant and her] with the required care." The applicant's wife further stated that if she and her husband were forced to return to the Philippines they "would lose [their] gainful employment."

The applicant's statement that her mother-in-law's assistance would be insufficient to permit her to care for her children in her husband's absence is not supported by any evidence in the record nor even by any other assertions. Merely making that conclusory statement is insufficient to sustain the burden of proof in this matter. The evidence in the record does not demonstrate that the applicant's wife would be unable to care for their children in his absence and does not demonstrate that his absence would require her to cease working.

The applicant's wife has contributed substantially to the family income during each year for which the record contains evidence, earning at least \$38,005.66, \$31,960.84, and \$43,498.27 during 2000, 2001, and 2004, respectively. The most recent evidence in the record of the applicant's wife's income is her statement, in her March 20, 2002 letter, that she was then earning approximately \$44,000 annually.

The applicant's wife is not obliged to accompany the applicant if he returns to the Philippines. She can accompany him, or, as a citizen of the United States, she is entitled to remain in the United States. The AAO will separately address the financial hardship that would allegedly follow from those two alternatives.

The applicant has asserted that he and his wife would be unable to find suitable employment in the Philippines, but has provided no evidence in support of that assertion. The applicant has not,

therefore, demonstrated that hardship would result to his wife if she accompanied him to the Philippines.

Counsel and the applicant's wife argue that the hardship would be extreme, because the applicant's wife would be unable to pay the family's obligations without the additional income the applicant provides.

The applicant's wife appears to earn an adequate income to support her family even absent the applicant's additional earning power. Although losing the applicant's income would undoubtedly result in hardship, it would not necessarily result in any greater hardship than that one would expect when a family member is removed from the United States. The inability to maintain one's present standard of living does not necessarily constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

Further, the record contains no evidence, other than statements by the applicant's wife and others, that the applicant's wife, if forced to live without the applicant's income, would be unable to make the financial adjustments necessary to live on her own ample income. The applicant has not demonstrated that, if he were removed from the United States and his wife remained, the financial hardship that would accompany the loss of his income would be greater than the normal, expected hardship that results from the loss of a deported family member's income.

The record contains evidence pertinent to physical and psychological harm to the applicant's wife and mother that would allegedly ensue if the applicant is unable to remain in the United States.

With the previous Form I-601 application, previous counsel provided a report, dated November 10, 2003, from a clinical social worker. The social worker stated that the applicant's wife provided the information in that report, that she is experiencing stress, insomnia, weight gain, lethargy, chest pains, anxiety, and depression; and had previously attempted suicide. The social worker concluded, "In my professional opinion, [the applicant's wife] is clearly suffering from post-traumatic stress." The social worker admitted that her diagnosis is chiefly the product of the applicant's wife's self-reporting. The social worker's report will be accorded little evidentiary weight.

The record also contains a March 11, 2006 psychologist's report addressed to counsel. In that report, the psychologist quoted the applicant's wife for various propositions. The psychologist stated, based on the applicant's wife's information, that the applicant's wife has anemia, neck and shoulder injuries, and carpal tunnel syndrome. No medical doctor's report or other independent confirmation of those health issues and their severity is in the record. Counsel echoed the applicant's wife's assertion that she might be unable to afford treatment for her anemia if she returned to the Philippines and listed the harm that may result from untreated anemia. She further stated that the only medication the applicant's wife was then taking was iron tablets. There is no indication of any other therapy for any of her physical complaints.

The record contains no indication that the applicant is undergoing any treatment for her anemia other than taking iron pills. The record contains no support for the applicant's wife's assertion, and

counsel's repetition of it, that the applicant would be unable to afford treatment for her anemia if she returns to the Philippines.

The psychologist stated that the applicant's wife was previously diagnosed with post-traumatic stress disorder by her "therapist" and with Adjustment Disorder with Depressed Mood by Kaiser Permanente. The diagnosis of post-traumatic stress disorder is discussed above. The record contains no evidence pertinent to the diagnosis of adjustment disorder with depressed mood that counsel attributed to Kaiser Permanente and the psychologist provided no further information pertinent to that diagnosis.

The psychologist stated that she had administered psychological inventories to the applicant and his wife, and that based on their responses the applicant's wife appears to be depressed, anxious, and withdrawn. The psychologist mentioned a previous suicide attempt but provided no additional detail. The psychologist further stated that if the applicant's wife goes to the Philippines she will leave her parents, who are ill, in the United States.

As a result of her interview with the applicant and his wife the psychologist recommended that the applicant be permitted to remain in the United States, and that otherwise the applicant's wife's condition would be exacerbated.

Nothing in the record suggests that the applicant's wife has received regular psychiatric care. Rather, the evidence suggests that she consulted with a social worker and a psychologist, once each, on occasions approximately two and a half years apart, as necessary to obtain letters for use as evidence in the instant case.

That report contains no evidence that either the social worker or the psychologist conducted therapy with the applicant's wife either before or after their meetings, nor does the evidence show that the applicant's wife has ever sought treatment for any symptoms related to stress, anxiety, or depression. Moreover, the record does not show that either the social worker or the psychologist recommended that the applicant's wife undergo psychiatric treatment or psychological therapy to relieve her symptoms. The record does not establish that the applicant's wife is experiencing or will experience emotional hardship greater than that that is normal in similar situations.

As to the applicant's mother, a May 9, 2002 letter from a medical doctor states that the applicant's mother then had high blood pressure and chest pains, that she would shortly undergo an angiogram for further evaluation, and that she wanted her son close to her. An October 27, 2003 note from a different medical doctor states that the applicant's mother has been under his care for arterial disease, has had angioplasty, and is seen for follow-up at four to six week intervals.

In her own April 4, 2006 statement, the applicant's mother indicated that she was then 65 years old, had received heart valve repair, and was on maintenance medications for her heart condition. She further stated that constant worrying about the applicant's immigration status is taking a toll on her health. The applicant's mother did not provide any medical evidence in support of the alleged

damage to her health occasioned by the applicant's immigration status or the severity of that damage.

None of the evidence indicates that the applicant's mother's health is poor. High blood pressure and chest pains can be very serious or nearly innocuous. Further, the applicant's mother indicated, in her April 4, 2006 statement, that she had six children. In her March 25, 2006 report, the psychologist indicated that all five of the applicant's siblings reside in the United States, along with nine of his cousins and nine nieces and nephews. Whatever tangible assistance the applicant provides to his mother might just as well be provided by any one of the applicant's siblings. Nothing indicates that the applicant's mother's health problems will be exacerbated by his absence.

In his March 29, 2006 statement, the applicant asserted that his children do not speak Tagalog and are not accustomed to life in the Philippines, and that if applicant and wife return to Philippines they would, therefore, suffer from the prolonged absence of their children. He added, "[the] Philippines, as everyone well knows, is currently experiencing severe economic, political, and terrorism problems." In a March 29, 2006 statement the applicant asserted that his removal to the Philippines would "cause [his] family undue financial hardship and eventual breakdown." He explained,

I no longer have any family left in the Philippines. My brother and mother are also here in the United States. I [would] have no place to go and [would] not have any relatives or friends [to] help me there.

The psychologist's March 25, 2006 report states that the applicant's wife has two siblings living in the Philippines. It further states that they would be unable to help the applicant and his wife, but does not state how the psychologist reached that conclusion.

In her March 29, 2006 statement, the applicant's wife stated, "Should [the applicant] leave, I may be constrained to accompany him back to the Philippines as his wife and companion, but unfortunately our children could not. [Our sons], who were both born and raised in the United States, would not be able to live in the Philippines. Current economic and living conditions in the Philippines prevent that. [The applicant] and I do not wish to subject our children to the hardship they would surely experience were they made to live in the Philippines."

Counsel, the applicant, the applicant's wife, and the psychologist have all asserted that the situation in the Philippines precludes the applicant's wife and children from joining him there. They cite the economic climate and the possibility of terrorism as reasons.

In support of the assertions that the Philippines are undergoing an economic crisis and a great Muslim insurgency, the psychologist cited a television program and an "article by [redacted] [sic] entitled Philippines Review 2003." No transcript of the television program or copy of the article is in the record, and the AAO cannot, therefore, consider them. The record contains no independent evidence on those points.

The record contains no convincing evidence that going to the Philippines would necessarily expose the applicant's family to an unreasonable risk of terrorism. Although the AAO has no reason to question that an insurgency exists in that country, the record contains no evidence that it would unavoidably imperil the applicant's family. The danger might depend, for instance, on where in the Philippines the applicant relocates. Similarly, that the applicant's children do not speak Tagalog and are not otherwise accustomed to life in the Philippines does not necessarily mean that they could not adapt to the Philippines.<sup>1</sup>

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife and his mother face extreme hardship if the applicant is refused admission. Rather, the record suggests that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States and about its potential impact on them. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally

---

<sup>1</sup> Although hardship to the applicant's children is not, *per se*, a permissible consideration in deciding this waiver application, it is considered here in view of the possibility that hardship to them might occasion hardship to the applicant's wife or mother.

insufficient to establish extreme hardship. *See INS v. Jong Ha Wang, 450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen wife and U.S. citizen parent as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.