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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  
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Services

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[Redacted]

FILE: [Redacted] Office: CHICAGO, ILLINOIS Date:

MAY 07 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, 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). She is the wife of a naturalized U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 23, 2005.

On appeal, counsel for the applicant asserts that husband will suffer extreme hardship because he has several medical conditions which require a caregiver.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 indicates that the applicant used a passport issued to another individual to enter the United States on March 14, 1998. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act. The applicant does not contest this finding. On August 27, 2002, the applicant applied for adjustment of status.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the U.S. citizen spouse of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 list of non-exclusive factors relevant to 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record contains a statement from the applicant's husband, two statements from the doctor treating the applicant's husband and his medical records.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal the applicant's husband asserts that he is suffering from hypertension, high cholesterol, ear problems and heart problems, and that he is dependent on his wife for his medical needs, that she is the only person who can take care of him, and that he is advanced in years and cannot live alone. Statements by [REDACTED] indicate that the applicant's husband has been under her medical care since 1988. She reports that he has hypertension, high cholesterol, ear problems and heart problems, needs a 24-hour companion to call for help in case of medical emergency and requires someone to take care of him all the time.

While the evidence submitted to document the applicant's husband's medical condition is not extensive, it is sufficient to establish that the applicant's husband is suffering from several serious medical conditions. In light of the applicant's husband's advanced age and the medical conditions and requirements documented in the record, the AAO finds it reasonable to conclude that he requires the presence of a daily caregiver. As such, the record establishes that the applicant's husband would suffer extreme hardship in the event that she were excluded from the United States and he remained.

However, as previously discussed, extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In this case, neither the applicant nor her counsel has asserted that the applicant's husband cannot relocate to the Philippines with his wife. The record contains a Form I-485, Application to Register Permanent Resident or Adjust Status, which indicates

that the applicant has several children residing in the Philippines who might be able to assist her in caring for her husband. The record does not establish that the applicant's husband would be unable to receive treatment in the Philippines for his medical conditions. As the applicant has failed to articulate any negative impacts on her husband if he were to return to the Philippines with her, the AAO is unable to find that he would suffer extreme hardship upon relocation.

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 husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband may suffer hardships as a result of his wife's inadmissibility. However the record does not distinguish these hardships from those normally associated with removal and separation. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required 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(i) of the Act, the burden of proving eligibility rests 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.