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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

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FILE:

Office: CHICAGO, IL

Date:

OCT 26 2009

IN RE:

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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 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. 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 her husband in the United States.

The field office 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 Field Office Director*, dated June 4, 2007.

On appeal, counsel contends that a Form I-601 waiver was unnecessary because the applicant's use of another person's passport constitutes entry without inspection. Counsel alternatively contends that even if the applicant's entry is considered fraudulent, the field office director abused his discretion in not finding extreme hardship to a qualifying relative. In addition, citing *Patel v. Gonzales*, 432 F.3d 685 (6th Cir. 2005), counsel contends that USCIS should have considered the waiver application *nunc pro tunc*.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating that they were married on October 18, 2003; a letter from a social worker addressing the applicant's mental health; a letter from [REDACTED]; a letter from the applicant; several letters of support; copies of financial and tax documents; a copy of [REDACTED] naturalization certificate; a copy of *Patel v. Gonzales* and a memorandum from the former INS General Counsel; 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 that the applicant entered the United States in May 1995, using a fraudulent name, [REDACTED] *Record of Sworn Statement*, signed by the applicant February 24, 2005 (stating that she paid \$8,000 for a passport to enter the United States). Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for entering the United States by fraud.

In his notice of appeal, counsel contends the applicant's "pre-1996 presentation of the passport and visa of another person constitutes entry without inspection," and states that a brief would be filed within thirty days. *Notice of Appeal of Motion (Form I-290B)* (appeal), dated July 6, 2007; *see also Notice of Appeal of Motion (Form I-290B)* (motion to reopen and reconsider), dated July 6, 2007. The AAO notes that, to date, no brief has been received. To the extent counsel's cover letter states that the applicant's entry "using someone else's passport . . . must be considered an entry without inspection as the inspecting officer had no ability to identify the person presenting herself," counsel points to no authority for his proposition that a fraudulent entry must be considered an entry without inspection. *Letter from [REDACTED]* dated July 6, 2007. Although an applicant may be eligible to adjust their status notwithstanding inadmissibility based on an entry without inspection, inadmissibility for fraud is a distinct and separate ground of inadmissibility. Compare § 212(a)(6)(A)(i) of the Act (aliens present without admission or parole), with § 212(a)(6)(C) (misrepresentation) of the Act. Indeed, the memorandum from the former INS General Counsel that counsel submitted with his appeal distinguished fraudulent entries into the United States from entries without inspection. *Memorandum from the Office of the General Counsel, Request for Legal Opinion: The Impact of the 1996 Act on Section 245(i) of the Act*, dated February 19, 1997 at 6, 8 ("Congress did not intend for section 245(i) of the Act to become a means of eroding the integrity of the normal overseas visa processing system, or of encouraging fraudulent entries into this country," and concluding that "[u]nder section 245(i)(1)(A) of the Act, an alien who is physically present in the United States *after entering this country without inspection* will continue to be 'admissible.'") (emphasis added).

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 husband, [REDACTED], states that he would suffer financially and emotionally if his wife's waiver application were denied. [REDACTED] states that if his wife were sent back to the Philippines, he would lose her income. He states she would be unable to find a job in the Philippines and that he would use his limited funds to support a second home in the Philippines, creating a substantial financial burden. [REDACTED] states that even if his wife found employment in the Philippines, he does not think her physical and emotional health would permit her to work. In addition, [REDACTED] contends his health would be affected if his wife moved back to the Philippines because he would be constantly worried about her well-being. [REDACTED] states he is "in the high risk age bracket of 45-60" and claims his doctor stated that additional stress would be detrimental to his health. [REDACTED] states he "do[es] not want to develop high blood pressure or heart problems." Mr. [REDACTED] states he would be devastated if his wife left the United States and that he does not know if he could handle it. He states he would be "lost and adrift" and describes his wife as his soul mate. *Letter from [REDACTED] dated August 6, 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 [REDACTED] will endure hardship as a result of the denial of his wife's waiver application and is sympathetic to his circumstances. However, [REDACTED] does not discuss the possibility of moving back to the Philippines, where he was born, to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. Although [REDACTED] contends he is "in the high risk age bracket of 45-60," significantly, [REDACTED] does not allege that he has any health problems whatsoever. [REDACTED] does not contend that he cannot find employment in the Philippines and according to his Biographic Information form in the record, his mother lives in the Philippines. *Biographic Information (Form G-325A)*, dated March 10, 2004. To the extent the record contains evidence that the applicant has a biological predisposition to depression, takes antidepressant medication, and has had suicidal thoughts in the past, there is no contention that the applicant could not be adequately treated in the Philippines. In any event, the statute considers hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant, not the applicant herself. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1).

If [REDACTED] decides to stay in the United States, their situation 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 financial hardship claim, although the record contains some tax documents, a copy of a lease agreement indicating a monthly rent payment of \$600, and copies of telephone bills, the record contains insufficient evidence to show [REDACTED] would suffer extreme financial hardship if his wife's waiver application were denied. The record shows that [REDACTED] earns almost \$40,000 per year working as an independent contractor providing elder care services. *Letter from [REDACTED]*, dated February 12, 2005 (stating [REDACTED] earns a weekly gross income of \$735). Although the record shows that the applicant also works as a caregiver, there is no evidence showing [REDACTED] would experience extreme financial hardship if he lost his wife's income. 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).

Finally, counsel's contention that the field office director should have considered the waiver application *nunc pro tunc*, and counsel's reliance on *Patel v. Gonzales*, 432 F.3d 685 (6th Cir. 2005), is unpersuasive. Like the petitioner in *Patel*, the applicant in this case was simply ineligible for relief when she entered the United States in 1995. She was not married to a lawful permanent resident or U.S. citizen and had no basis to adjust her status. *See Patel*, 432 F.3d at 694 ("When Petitioners entered the United States [using fraudulent passports] in 1993, their son . . . was not yet a United States citizen. Consequently, in 1993, Petitioners were not eligible for a discretionary waiver under the 1993 version of § 212(i).").

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 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.