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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: SEP 04 2009

IN RE: [REDACTED]

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, 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 Field Office Director, Los Angeles, California. The matter 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. 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) for having procured admission to the United States through fraud or misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The field office director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the Field Office Director* dated June 15, 2007.

On appeal, counsel for the applicant asserts that the applicant has established extreme hardship to her U.S. Citizen husband and U.S. Citizenship and Immigration Services (“USCIS”) erred in relying on court and Board of Immigration Appeals (BIA) decisions that address extreme hardship in the context of suspension of deportation cases and are therefore inapplicable. *Counsel’s Brief in Support of Appeal* at 4. Counsel asserts that the applicant’s husband would suffer extreme hardship as a result of forced separation from the applicant or having to relocate to the Philippines, where he has no ties and would be unable to support himself financially. *Brief* at 5. Counsel additionally asserts that the applicant would suffer hardship in the Philippines because he was born in Puerto Rico and has lived his entire life in the United States, has extensive family ties in the United States, and does not speak the native language of the Philippines. *Brief* at 5. In support of the waiver application and appeal counsel and former counsel submitted an affidavit from the applicant’s husband and tax returns and W-2 forms for the applicant and her husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a fifty-seven year-old native and citizen of the Philippines who has resided in the United States since March 2000, when she entered using a fraudulent Philippine passport and U.S. visa issued in the name of [REDACTED]. The applicant married her husband, a fifty year-old native and citizen of the United States, on July 31, 2004. They currently reside in Tustin, California.

Counsel asserts that the applicant's husband would suffer extreme hardship if he relocated to the Philippines because he would be separated from his family members in the United States and would have difficulty adapting to conditions there because he does not speak Tagalog, is unfamiliar with the culture, and would have no family there aside from the applicant. *Brief* at 4-5. The applicant's husband states in his affidavit that he has a close relationship with his family members in Puerto Rico and would have difficulty keeping in touch with them if he relocated to the Philippines. *See Affidavit of [REDACTED] dated March 22, 2007*. He further states that he would have difficulty earning what he earns in the United States as a commercial electrician and support his wife and he also fears that as an American citizen he would be the target of terrorist activities as described in an travel advisory from the U.S. Department of State. *Id.* The record contains no documentation concerning conditions in the Philippines and no evidence establishing that the applicant's husband has family members residing in the United States. The AAO notes, however, that the applicant's husband was born in Puerto Rico and has never resided in the Philippines, and biographical information submitted with the applicant's Petition for Alien Relative indicates that his parents reside in Puerto Rico. Further, as noted by the applicant's husband, the U.S. Department of State has issued a warning against travel to certain parts of the Philippines and further warns that "U.S. Citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those due to terrorism." *See U.S. Department of State, Bureau of Consular Affairs, Philippines – Country Specific Information*, updated February 6, 2009. The Bureau of Consular Affairs further states,

While travelers may encounter such threats anywhere in the Philippines, the southern island of Mindanao and the Sulu Archipelago are of particular concern. Travelers should exercise extreme caution in both central and western Mindanao as well as in the Sulu Archipelago. For further information regarding the continuing threats due to terrorist and insurgent activities in the southern Philippines, see the Philippine Travel Warning.

Terrorist groups, such as the Abu Sayyaf Group, the Jema'ah Islamiyah and groups that have broken away from the more mainstream Moro Islamic Liberation Front or Moro National Liberation Front, have carried out bombings resulting in deaths, injuries and property damage. In November 2007, a bombing outside the House of Representatives in Metro Manila resulted in a number of deaths and injuries to bystanders. . . . While those responsible do not appear to have targeted foreigners, travelers should remain vigilant and avoid congregating in public areas . . . . Kidnap-for-ransom gangs operate in the Philippines and sometimes target foreigners, as well as Filipino-Americans. The New People's Army (NPA), a terrorist organization, operates in many rural areas of the Philippines, including in the northern island of Luzon. While it has not targeted foreigners in several years, the NPA could threaten U.S. citizens engaged in business or property management activities, and it often demands "revolutionary taxes."

The AAO finds that the evidence on the record, when considered in the aggregate, establishes that the emotional and physical hardships that would result from relocating to the Philippines and having to adjust to the language, culture, and economic and social conditions there after residing in the United States for his entire life would rise to the level of extreme hardship for the applicant's husband. The record establishes that the applicant's husband is not a native Tagalog speaker and that he has family ties in the United States and no ties to the Philippines. The hardship caused by severing his ties to the United States, having to adapt to an unfamiliar culture, and seeking employment without knowledge of the native language, combined with the threat of terrorist groups that may target U.S. Citizens, would amount to extreme hardship for the applicant's husband if he were to relocate to the Philippines.

The applicant's husband states that he and the applicant are in the process of opening an electrical contracting business in California and further states that he earns \$3200 per month as a commercial electrician. *Affidavit of [REDACTED] dated March 22, 2007.* Income tax returns on the record indicate that the applicant's husband earned all of their reported income and lists the applicant as a homemaker. The record shows that the applicant's husband is currently financially supporting both himself and the applicant and there is no indication that there are any unusual circumstances that would cause financial hardship to the applicant's husband if the applicant were removed. Any financial impact that would result if the applicant were denied admission to the United States therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband states that he and the applicant "were meant to be together forever" and that he loves the applicant and she is supportive of his needs. *Affidavit of [REDACTED] dated March 22, 2007.* No documentation was submitted concerning his mental health or the potential effects of separation from the applicant, and the evidence on the record is not sufficient to establish that any emotional harm the applicant's husband would experience is more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his concern 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. A waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission and he remains in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United

States. 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); *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).

In this case, the record does not contain sufficient evidence to show that any 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.

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.