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Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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SEP 21 2009

SEP 21 2009

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date:

IN RE:

Applicant:

[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, Los Angeles, California, and 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 who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting a passport in someone else's name. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen spouse.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 13, 2006.

On appeal, the applicant, through counsel, asserts that the District Director "erred in denying the I-601 Waiver." *Appeal Brief*, page 2, filed January 16, 2007.

The record includes, but is not limited to, counsel's appeal brief, affidavits from the applicant's husband and mother-in-law, letters from [REDACTED] regarding the applicant's husband's psychological condition and applicant's mother-in-law's medical conditions, and a psychological evaluation on the applicant's husband from [REDACTED]. 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, that:

- (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 Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present application, the record indicates that the applicant initially entered the United States on June 18, 1998, by presenting a passport in someone else's name. On May 19, 2006, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On May 23, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 3, 2006, the applicant's Form I-130 was approved. On November 3, 2006, the applicant filed a Form I-601. On December 13, 2006, the District Director denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to her qualifying relative.

The AAO notes that counsel does not dispute that the applicant misrepresented herself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(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. Hardship the alien herself experiences upon removal is irrelevant to a section 212(i) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is removed to the Philippines. *See appeal brief, supra*. In an evaluation dated October 23, 2006, [REDACTED] states the applicant's husband is suffering from severe depression. Additionally, in a letter dated January 8, 2007, [REDACTED] states the applicant's husband was diagnosed with acute depression, he advised the applicant's husband to see a psychiatrist, and he prescribed him antidepressants. [REDACTED] states the applicant's husband's "emotional responses during this difficult time appear to be intensifying as the idea of separation from [the applicant] continues to weigh heavily on him." [REDACTED] also states that the applicant's husband "could imagine himself taking his own life...because he can not [sic] bear the idea of being separated from [the applicant]." The AAO notes

that since the applicant's husband's depression is primarily caused by the possibility of separation from the applicant, if the applicant's husband were to join the applicant in the Philippines, then the depression would presumably no longer be an issue. [REDACTED] also states the applicant's husband suffers from some medical conditions, including insomnia and headaches. The AAO notes that there was no documentation submitted establishing that the applicant's husband cannot receive medical care in the Philippines or that he has to remain in the United States to receive medical treatments. In an affidavit dated October 27, 2006, the applicant's husband states that if he joined the applicant in the Philippines, he "would not be able to find work." The AAO notes that the applicant's husband is employed as a professional caregiver, and it has not been established that he has no transferable skills that would aid him in obtaining a job in the Philippines. Additionally, the AAO notes that the applicant's husband is a native of the Philippines who spent his formative years in the Philippines, he speaks the native language, and it has not been established that he has no family ties in the Philippines. In fact, the AAO notes that the applicant's husband's brother resides in the Philippines. Counsel states that the applicant's mother-in-law "is completely dependent on [her son and the applicant].... If [the applicant's husband] returns to the Philippines, no one is available to provide for [his mother] physically or financially." *Appeal Brief, supra* at 4. In an affidavit dated October 6, 2006, the applicant's mother-in-law states she will suffer extreme hardship if the applicant is not granted her waiver. The applicant's mother-in-law states she is "just getting over breast cancer and still needs to attend regular doctor's visits and take medications. [She] also suffer[s] from high blood pressure and gout." The AAO notes that the applicant's mother-in-law is not a qualifying relative for a waiver under section 212(i) of the Act. Additionally, there is no evidence in the record establishing that the applicant's mother-in-law could not receive medical treatments in the Philippines or that she has to remain in the United States to receive any medical treatments.

The AAO finds that counsel has demonstrated extreme hardship to the applicant's husband if he remains in the United States without the applicant; however, it has not been established that the applicant's husband would suffer extreme hardship if he joined the applicant in the Philippines. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he joins her in the Philippines.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he were to join the applicant in the Philippines.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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)(9)(B) 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.