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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

[redacted]

AUG 19 2003

FILE: [redacted] Office: LOS ANGELES, CA 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 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
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 applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States (U.S.) under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen, and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly.

On appeal, counsel states that the Immigration and Naturalization Service ("Service", now known as the Bureau of Citizenship and Immigration Services ("Bureau")) abused its discretion by failing to thoroughly analyze the facts and evidence in the case and by misapplying precedent law regarding extreme hardship. Specifically, counsel states that the Service ignored the applicant's husband's (Mr. [redacted] family ties in the United States, and that hardship that the applicant's two adult permanent resident sons would suffer upon separation from their mother, would cause extreme emotional hardship to Mr. [redacted] Counsel asserts further that the Service erred in not assessing the hardship Mr. [redacted] would suffer if he returned to the Philippines with his wife.

Counsel asserts that because the applicant's case was filed with the Service prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), the Service erred in applying section 212(i) waiver standards developed after IIRIRA was enacted. Counsel's assertion is unpersuasive.

In the Board of Immigration Appeals ("Board") case, *Matter of Cervantes,* 22 I&N Dec. 560, 563-65 (BIA 1999), the Board held that:

> [T]he enactment of new statutory rules of eligibility for discretionary forms of relief acts to withdraw the [Attorney General's, now the Secretary of Homeland Security [Secretary]] jurisdiction to grant such relief in pending cases

> to aliens who do not qualify under those new rules.
>
> . . . .
>
> [W]e . . . find that the new provisions in section 212(i) must be applied to pending cases.

Based on the above holding, it is clear that the district director correctly applied current section 212(i) standards to the applicant's case.

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

> (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 that:

> (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 Attorney General [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) 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 the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's two legal permanent resident sons will not be considered in this decision.

Counsel asserts that due to their different purposes and scope, the extreme hardship standards set forth in past suspension of deportation and section 212(h), 8 U.S.C. § 1182(h) legal cases, should not be applied to immigration cases involving section 212(i) of the Act. Counsel implies that the inadmissibility bar under section 212(a)(6)(C) of the Act is less serious than the criminal or deportation based grounds addressed in suspension of deportation or section 212(h) proceedings, and that the standard for extreme hardship under section 212(i) should thus be construed more broadly. Nevertheless, the fact that laws in recent years have limited rather than extended the relief available to aliens who have committed fraud or misrepresentations goes contrary to counsel's assertion that section 212(i) waivers should be broadly applied.

In addition to significant amendments made to the Act in 1996 by IIRIRA, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). Moreover, the Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act. In 1990, section 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act." Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including "impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name." *See 18 U.S.C. § 1546.*

Moreover, the Board stated in *Matter of Cervantes-Gonzalez, supra,* that:

> Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the

exercise of discretion.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board then outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

> The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

In the present case, the record reflects that the applicant is from the Philippines. The record reflects further that Mr. [redacted] is a native of the Philippines, that he met and married his wife in the Philippines prior to coming to the U.S., and that seven of the couple's nine children live in the Philippines.

Counsel asserts that Mr. [redacted] would not be able to obtain proper medical care in the Philippines and that he would thus suffer extreme medical hardship if he returned to the Philippines with his wife. The July 1999 medical records regarding Mr. [redacted] coronary bypass operation indicate that Mr. [redacted] was released from the hospital in stable condition after a few days and discharged back to jail. *See* July 23 through July 30, 1999, medical reports by Dr. [redacted] M.D. Furthermore, the October 31, 2002, letter written by Dr. [redacted] M.D. indicates that the applicant "has done well, with minimal symptoms following surgery" and that the applicant has no chest pain. The letter indicates that the applicant takes regular medication and requires quarterly follow-ups to ensure continued improvement. However, the record contains no evidence to indicate that adequate health maintenance and follow-up care and medication are unavailable in the Philippines.

Counsel asserts that Mr. [redacted] would suffer emotional and financial hardship if he remained in the U.S. and his wife returned to the Philippines. However, aside from a one-page outline of expenses prepared by the applicant, the record

contains no independent documentary evidence establishing what Mr. [redacted] expenses are, or the level of financial hardship he would suffer if the applicant had to return to the Philippines. The record additionally contains no evidence to support the assertion that Mr. [redacted] would suffer financial hardship if he returned to the Philippines. Moreover, the record contains no evidence to indicate that Mr. [redacted] would suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. *Hassan v. INS, supra,* held further that the 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. 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 remains entirely with the applicant. 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.