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

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

[redacted]

FILE: [redacted] Office: Los Angeles Date: JUN 12 2003

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

JUN1203_01H2212

DISCUSSION: The waiver application was denied by the Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office 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 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 on October 23, 1986.

The applicant married a native of the Philippines in the Philippines in June 1970, and her husband became a naturalized U.S. citizen on May 29, 1997. The applicant became the beneficiary of an approved Petition for Alien Relative in 1992 and she seeks a waiver of this ground of inadmissibility under section 212(i) of the Act, 8 U.S.C § 1182(i).

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

When the initial waiver application was filed in October 1997, the applicant listed only her husband, [redacted] as a qualifying relative. That application was denied on December 10, 2002. On appeal, the applicant submits an amended waiver application dated February 3, 2002, on which she also lists her U.S. citizen parents as qualifying relatives.

On appeal, counsel discusses various cases relating to the issue of "extreme hardship" and the application of that term. Counsel submits additional documentation to support a claim to such hardship to the applicant's parents. Counsel provides documentation relating to the health of the applicant's parents, and states that the applicant and her husband provide housing for them and pay for their utilities and most of their groceries.

The record reflects that the applicant procured admission into the United States in October 1986 by presenting a Philippine passport and U.S. nonimmigrant visa in the name of Emma Abrot. The applicant then remained longer than authorized.

Section 212(a)(6)(C) of the Act provides, in 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 Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed fraud or misrepresentation. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. *See Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). *See also Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, P.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). In the Act of 1990, which became effective on June 1, 1991, Congress imposed a statutory bar on those who made oral or written misrepresentations in seeking admission into the United States and on those who made material misrepresentations in seeking admission into the United States or in seeking " other benefits" provided under the Act. Congress made the amended statute applicable to the receipt of visas to, and admission of, aliens who committed acts of fraud or misrepresentation, whether those acts occurred before, on, or after the date of enactment.

Congress has increased the penalties on fraud and willful misrepresentation, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship. Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

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. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *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 (the Board) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 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.

The Board noted in *Cervantes-Gonzalez, supra,* that the alien's wife knew that he was in deportation proceedings at the time they were married. The Board stated that this factor goes to the wife's expectations at the time they were wed. The alien's wife was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The alien's wife was also aware that a move to Mexico would separate her from her family in the United States. The Board found this to undermine the alien's argument that his wife will suffer extreme hardship if he is deported. The Board then refers to *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), where the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The applicant in the present matter procured admission into the United States in October 1986, and it must be presumed that her husband was aware of this when she joined him in the United States.

The Board in *Cervantes-Gonzalez, supra,* also referred to *Silverman v. Rogers,* 437 F.2d 102 (1st Cir. 1970), cert. denied 402 U.S. 983 (1971), where the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

Although the applicant alleges financial hardship in this matter, the Board referred to *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994), in which the court stated that the "extreme hardship requirement of section 212(h)(2) of the Act was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." The court 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.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991). 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 record contains medical records for the applicant's mother, [redacted] which reflect that (1) she had multiple facial keratoses excised on September 29, 1994; (2) she complained of chest pain and headaches on December 2, 1994, resulting in a complete physical examination and (3) on October 18, 1996, her blood pressure was checked and she had a cold. According to a medical report written in layman's terms, Salvacion has a history of hypertension, arthritis and multiple facial keratoses. The record is devoid of medical documentation for Salvacion after October 18, 1996.

The record also contains medical records for the applicant's father, [redacted] which reflect that (1) on May 8, 1996, he had minor surgery; (2) on December 2, 1997, he had a prostate examination and he was advised to return in December 1998; (3) on December 23, 1998, he was treated for glaucoma and advised to return in six months; (4) on December 24, 1998, he returned for a prostate examination and was advised to return in December 1999; and (5) on February 5, 1999, he was a walk-in patient complaining about dizziness. The record fails to contain a medical determination of the results of that visit. The record is devoid of medical documentation for Eulalio after February 1999.

There is current medical documentation for the applicant's husband which indicates he has a history of diabetes, lung disease and arthritis and has undergone cataract surgery on both eyes. A note from [redacted] M.D. dated January 23, 2003 states that he is disabled. This is not mentioned anywhere else in the record nor is there any explanation of the extent of his disability or documents to support this claim. Further, there is no evidence that he would be unable to care for himself if his wife were not present or that any of his conditions are not treatable in the Philippines.

A self-prepared financial statement indicates that the applicant's net monthly income is $5080, as compared to her husband's, which is listed as $1282. The record contains no documents to support this or the claim that the applicant is the primary financial support for her husband and her parents.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relatives would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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.