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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: APR 19 2004

IN RE: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, 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 by a consular officer 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a legal permanent resident of the United States and seeks the above waiver of inadmissibility in order to reside in the United States with his spouse.

The officer in charge (OIC) concluded that the applicant had 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. *See* Decision of the Officer in Charge, dated June 25, 2003.

On appeal, counsel contends that the applicant has established extreme hardship to his spouse and the Immigration and Naturalization Service [now Citizenship and Immigration Services] did not articulate reasons in denying the Form I-601 waiver. *See* Form I-290B, dated July 21, 2003.

In support of these assertions, counsel submits an affidavit of the applicant's spouse, dated December 17, 2002; a copy of the permanent resident card issued to the applicant's spouse; a copy of the California Board of Registered Nursing card of the applicant's spouse; a copy of the certificate of marriage for the applicant and his spouse; a letter verifying the employment of the applicant's spouse; a letter from a licensed therapist, dated December 9, 2002; a note from a psychiatrist, dated December 9, 2002; a copy of a prescription for the applicant's spouse; documents evidencing the work attendance of the applicant's spouse; copies of medical records for the applicant's spouse and copies of financial documents for the applicant's spouse. The entire record was reviewed and considered in rendering 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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. 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 pursuant to section 212(i) of 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.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to the Philippines in order to reside with the applicant. Counsel contends that the applicant's spouse would not earn as much money as a nurse in the Philippines as she does in the United States and that she shares a close bond with her sister who resides in California. *See* Affidavit of Sheila Donor, dated December 17, 2002. The applicant's wife also asserts that she suffers from "serious kidney problems" for which she could not obtain adequate care in the Philippines. *Id.* The record contains only one medical report relating to treatment of her kidneys. *See* Outpatient Radiology Report, dated October 27, 2000. The record does not demonstrate that the applicant's wife suffers from a severe condition that requires constant medical care or advanced medical procedures. The AAO notes that the applicant's wife spent the majority of her life residing in the Philippines. While it is acknowledged that the country conditions and employment benefits in the Philippines are not necessarily comparable to those offered in the United States, the record does not demonstrate that relocation to her native country would impose extreme hardship on the wife of the applicant.

Further, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States maintaining her close relationship with her sister, lucrative employment and access to superior health care. The AAO notes that, as a legal permanent resident of the United States, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel submits a letter from a therapist as well as a prescription from a psychiatrist to support the proposition that the wife of the applicant suffers psychologically as a result of separation from the applicant. *See* Letter from Juliet Velarde Betita, MA, LMFT, dated December 9, 2002. *See also* Note from Alisa A. Cross, MD, dated December 9, 2002. The record, however, does not establish an ongoing relationship between the applicant's spouse and either of these mental health professionals. The record does not indicate whether or not the prescribed medication succeeds in assisting the applicant's wife and the record does not provide any information regarding the mental state of the applicant's spouse over time.

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. Moreover, the AAO notes that the U.S. Supreme 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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 he 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. *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.