

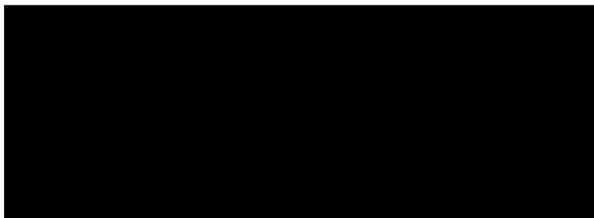
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**U.S. Citizenship  
and Immigration  
Services**

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FILE:

Office: MANILA

Date: JUL 13 2006

IN RE:

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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Manila, the Philippines, denied the waiver application. The matter is now before the Administrative Appeals Office, Washington DC (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 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 having used fraud or misrepresentation of a material fact to attempt to gain benefits under the Act. The applicant is the son of a lawful permanent resident and a naturalized U.S. citizen and the spouse of a lawful permanent resident. Pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), he seeks a waiver in order to reside in the United States with his father, mother and spouse.

The acting officer in charge 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 Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated January 19, 2005.

The record shows that, in 1992, the applicant attempted to obtain a nonimmigrant visa at the U.S. Embassy in Manila, the Philippines, by misrepresenting his marital status and providing fraudulent supporting documentation to the consular officer. On May 31, 2004, the applicant's wife became a lawful permanent resident through an employment based petition. On June 10, 2004, the applicant filed an Immigrant Visa and Alien Registration Application (Form OS-155A) in order to join his wife in the United States. On October 12, 2004, the applicant appeared at the U.S. Embassy in Manila, the Philippines. The applicant testified that, in 1992, he attempted to obtain a nonimmigrant visa by fraud.

On October 12, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that the acting officer in charge failed to consider the cumulative effects of hardships on his spouse, mother and father. *See Form I-290B*, dated February 16, 2005. In support of his contentions, the applicant submitted the above-referenced Form I-290B, an additional affidavit from his spouse and medical documentation for his mother and father. The entire record was reviewed in making this decision.

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, 8 U.S.C. § 1182(i) provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . .

The acting officer in charge based his finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act upon consular records, as well as the applicant's admission to attempting to obtain a nonimmigrant visa by misrepresenting his marital status and presenting fraudulent supporting documents. The applicant does not contest the acting officer in charge's finding of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). *Cervantes-Gonzalez* sets forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I. & N. Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the applicant. See *Matter of Mendez*, 21 I. & N. Dec. 296 (BIA 1996).

The record reflects that the applicant married his spouse, [REDACTED] (Ms. [REDACTED]), on May 30, 1998, in the Philippines. Ms. [REDACTED] is a native and citizen of the Philippines who became a lawful permanent resident in 2004. The applicant's father, [REDACTED] (Mr. [REDACTED]), is a native and citizen of the Philippines who became a lawful permanent resident in 1989. The applicant's mother, [REDACTED] Mrs. [REDACTED] is a native of the Philippines who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1994. Mrs. [REDACTED] has a 30-year old son and a 28-year old daughter, who are both naturalized U.S. citizens and have resided in the United States since 1997. The applicant and his spouse do not have any children. The record

reflects further that the applicant and Ms. [REDACTED] are in their 30's, Mr. and Mrs. [REDACTED] are in their 60's and Mr. and Mrs. [REDACTED] have some health concerns.

The applicant contends that his mother and father will suffer extreme hardship if they were to remain in the United States without him. In her affidavit, Mrs. [REDACTED] states that she has a history of breast cancer and has diabetes and hypertension which could lead to long term complications and that the stress of having the applicant stuck in the Philippines aggravates her health conditions. In his affidavit, Mr. [REDACTED] states that the applicant would be a big help to him and Mrs. [REDACTED] because Mrs. [REDACTED] requires a lot of care and it is an extreme hardship for them to be deprived of the applicant's loving care and companionship.

There are no financial records to indicate that the applicant has ever provided Mr. and Mrs. [REDACTED] with any financial support. The record does not support a finding of financial loss that would result in an extreme hardship to Mr. and Mrs. [REDACTED] if they had to support themselves without the applicant, even when combined with the emotional hardship discussed below.

The applicant provides documentation indicating that, in 1998, Mrs. [REDACTED] was diagnosed with breast cancer and that she recovered from it fully. The applicant provides a doctor's letter indicating that Mrs. [REDACTED] has been treated for hypertension and diabetes, and has a history of breast cancer that requires regular monitoring and medications. The letter contains no prognosis for Mrs. [REDACTED] diseases and does not indicate that she requires assistance from the applicant or any other person to function on a daily basis. The applicant provides a doctor's letter indicating that Mr. [REDACTED] has been treated for diabetes. The letter contains no prognosis for Mr. [REDACTED] disease and does not indicate that he requires ongoing treatment or requires assistance from the applicant or any other person to function on a daily basis.

The applicant provides a doctor's letter for Mrs. [REDACTED] indicating she is under the care of the doctor and that she is "experiencing severe stress and major depression and this is due her son's [REDACTED] inability to reunite with his family." The doctor's letter indicates that Mrs. [REDACTED] has been prescribed with medication for anxiety, insomnia and improved appetite. While the doctor's letter indicates that Mrs. [REDACTED] currently under his care, the record does not contain evidence that Mrs. [REDACTED] has received psychological treatment or evaluation in the past or receives on-going treatment. The doctor's letter does not indicate the affiant's familiarity with Mrs. [REDACTED] or under what basis he treats her. Additionally, the AAO notes that the doctor's letter was composed after the Form I-601 was denied and that Mrs. [REDACTED] made no mention of any psychological problems in the affidavit which she submitted with the Form I-601. Moreover, the doctor's letter submitted in connection with the Form I-601 indicated that she was experiencing severe stress due to the denial of the applicant's waiver which was aggravating her high blood pressure, but it made no mention of any depression or other psychological problems beyond the normal emotional hardship caused by a denial of a waiver. There is no evidence in the record to suggest that Mr. or Mrs. [REDACTED] health conditions are aggravated to such a degree by the denial of the applicant's waiver to be beyond the normal emotional hardship cause by such a denial. There is no other evidence in the record that Mr. and Mrs. [REDACTED] suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, the record indicates that Mr. and Mrs. [REDACTED] have family members in the area, such as their two other grown children, who may be able to provide them with emotional and financial assistance in the absence of the applicant. Finally, the AAO notes that the applicant has not resided in the same country as his parents since 1989 and has not been in a position to provide financial or

emotional support. There is no evidence in the record to suggest that the applicant's absence from Mr. and Mrs. [REDACTED] lives has been causing on-going emotional or financial hardship since 1989.

The applicant contends that his spouse will suffer extreme hardship if she remains in the United States without him. In her affidavits, Ms. [REDACTED] states that she is supporting the applicant financially because he is unemployed, that it is very hard on their marriage to be apart and that she believes she is exhibiting symptoms of depression. She also states that should she could get pregnant during one of her visits to see the applicant and she could not stand the thought of raising her child without him.

There is no evidence in the record to suggest that Ms. [REDACTED] is unable to support herself and the applicant financially. Moreover, there is evidence in the record that the applicant has previously been employed in the Philippines in a good job and was a good provider until he decided to leave his position in anticipation of traveling to the United States. There is no evidence in the record to suggest that the applicant would be unable to resume his previous position or that he would be unable to obtain *any* employment in the Philippines if he chose to resume employment.

There is no evidence in the record, besides Ms. [REDACTED] affidavits, that she suffers from a mental or physical illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While Ms. [REDACTED] is currently not with child, if she were to become a mother, the AAO notes that while it would be unfortunate that Ms. [REDACTED] would essentially be a single parent and professional childcare may involve an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Finally, Ms. [REDACTED] has family members in the United States, such as the applicant's parents, who may be able to provide her with financial and emotional assistance in the absence of the applicant.

The applicant contends that Mr. and Mrs. [REDACTED] would face extreme hardship if they relocated to the Philippines in order to remain with the applicant. The applicant contends that Mr. and Mrs. [REDACTED] would face extreme hardship because they have resided in the United States for an extended period of time, it would be an emotional hardship to leave their family in the United States, and they have medical conditions for which they most likely would be unable to obtain medical insurance coverage in the Philippines.

The applicant submitted a doctor's letter for Mrs. [REDACTED] indicating that her medical conditions require monitoring and medications, which would be cost prohibitive without health insurance and that Mrs. [REDACTED] would most likely be unable to receive health insurance in the Philippines. **There is no other evidence in the record to support the applicant's contentions and Mr. and Mrs. [REDACTED] affidavits do not assert that they would experience hardship should they return to the Philippines.** Moreover, there is evidence in the record that the applicant has previously been employed in the Philippines in a good job and was a good provider and there is no evidence in the record to suggest that the applicant would be unable to obtain sufficient employment in the Philippines to support the family. While the hardships Mr. and Mrs. [REDACTED] face are unfortunate, the hardships they face with regard to adjusting to a lower standard of living and separation from family, are what would normally be expected with any parent accompanying an alien to a foreign country. Finally, the AAO notes that, as a U.S. lawful permanent resident and U.S. citizen, the applicant's father and mother are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed

above, neither of them would experience extreme hardship if they remained in the United States without the applicant.

Ms. [REDACTED] contends that she would face extreme hardship if she relocated to the Philippines in order to be with the applicant. In her affidavit, Ms. [REDACTED] states that it is widely known that life in the Philippines is difficult and finding gainful employment is almost a fruitless endeavor. However, there is evidence in the record that the applicant has previously been employed in the Philippines in a good job and was a good provider and there is no evidence in the record to suggest that the applicant would be unable to obtain sufficient employment in the Philippines to support the family. There is no evidence in the record to suggest that Ms. [REDACTED] suffers from a mental or physical illness for which she would be unable to receive treatment in the Philippines. While the hardships Ms. [REDACTED] faces are unfortunate, the hardships she faces with regard to adjusting to a lower standard of living, are what would normally be expected with any spouse accompanying an alien to a foreign country. Finally, the AAO notes that, as a U.S. lawful permanent resident, 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 and, as discussed above, she would experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's father, mother and spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Mr. [REDACTED], Mrs. [REDACTED] and Ms. [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son or spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his lawful permanent resident father, U.S. citizen mother and lawful permanent resident spouse as required under section 212(i) of

the Act, 8 U.S.C. § 1186(i). 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 an 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.