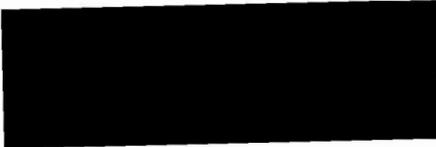




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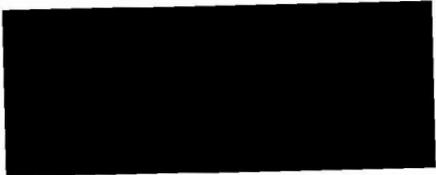
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, San Francisco, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, Brendalie Dy [REDACTED], is a native and citizen of the Philippines who entered the United States on February 12, 1996, using a fraudulent passport, and applied for adjustment of status on September 11, 2001. The applicant was found to be inadmissible under section 212(a)(6)(C)(i), 8 U.S.C. § 1182(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. In order to remain in the United States with her U.S. citizen (USC) husband, [REDACTED] and their USC child, the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The record reflects that Mrs. [REDACTED] entered the United States with a passport that did not belong to her. As a result of this misrepresentation, the district director found her to be inadmissible to the United States. *District director's decision*, dated May 25, 2004. The district director also found that the applicant 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). *Id.* The record also reflects that Mrs. [REDACTED] previously filed an adjustment application and a Form I-601 on July 14, 1999. On June 23, 2000 the district director denied the Form I-601. The applicant filed an appeal with the AAO on July 26, 2000. On March 12, 2001, the AAO dismissed the appeal.

With the current appeal, counsel submits a brief but no new documentation. The record includes the following documents submitted with the Form I-601, filed on July 14, 1999 and the Form I-601 on May 24, 2004: a hardship statement from Mr. [REDACTED] dated September 12, 2003; Mr. [REDACTED] naturalization certificate; proof of citizenship of their USC child, Breindel Joy, age 3; the couple's marriage certificate; work verification for Mr. and Mrs. [REDACTED] an assessment and recommendations by Licensed Marriage Family Therapist, [REDACTED] and income tax records from 1999 to 2002. The AAO reviewed the record in its entirety before reaching its decision.

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 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 inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship to the applicant herself is not considered under the statute, nor is hardship to her USC children, except in relation to how it affects the qualifying family member, in this case, Mrs. [REDACTED] USC husband. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant 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 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 age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Counsel asserts that the district director ignored the fact that if Mrs. [REDACTED] moves to the Philippines alone, Mr. [REDACTED] will have the added expenses of childcare for their son and living expenses for Mrs. [REDACTED] in the Philippines because Mrs. [REDACTED] would be unable to work due to the high unemployment rate in the Philippines. Counsel does not submit documentation breaking down Mr. [REDACTED] income and an estimated cost for childcare in his area, or documentation demonstrating why someone in Mrs. [REDACTED] situation would be unable to find employment in the Philippines. In addition, counsel has not shown how these added expenses would result in extreme financial hardship on Mr. [REDACTED]. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the district director did not take into account that Mrs. [REDACTED]'s absence would result in the disruption of Mr. [REDACTED]'s studies. First, counsel does not submit documentation to demonstrate that Mr. [REDACTED] is enrolled in school. Second, counsel does not elaborate on why Mr. [REDACTED] would be unable to attend school if he was the primary care giver to his son. Mr. [REDACTED] is a young, healthy individual. Many single parents work and attend school. Third, counsel asserts that Mr. [REDACTED] would be unable to afford school because of the added expense of daycare but does not submit documentation about the cost of Mr.

education. Counsel has submitted no documentation to show that Mr. [REDACTED] could not attend school if his wife relocates to the Philippines, or how his inability to attend school would result in extreme hardship to him. *See Matter of Obaigbena.*

Counsel asserts that the economic and social problems in the Philippines would make it difficult for the couple to earn a living there. While existing and political and economic conditions in the Philippines are considerations in determining extreme hardship, counsel has not submitted documentation about these conditions or evidence of how these conditions would affect Mr. [REDACTED] and his family. Counsel asserts that the District Director did not take into account the fact that Mr. [REDACTED] does not speak the language of the country to which his wife will return. Counsel, however, does not submit documentation to show that a monolingual English speaker would suffer extreme hardship if he moved to the Philippines. *See Matter of Obaigbena.*

Counsel asserts that Mr. [REDACTED] would suffer extreme emotional and financial hardship if Mrs. [REDACTED] went to live in the Philippines with their son and Mr. [REDACTED] stayed here in the United States. Counsel asserts that the added financial burden of maintaining two households, the airfare to the Philippines, and the income lost during visits to the Philippines would amount to extreme hardship. Counsel does not submit evidence of the actual costs involved. *See Matter of Obaigbena.*

Counsel asserts that Mr. [REDACTED] would suffer extreme emotional hardship if separated from his wife or if forced to relocate to the Philippines to avoid separation from her. On appeal, counsel only submits Mr. [REDACTED] hardship statement to support this assertion. (*See hardship statement, dated September 12, 2003.*) The record also contains an assessment submitted with Mrs. [REDACTED] previous appeal in 2000. (*See assessment by Licensed Marriage Family Therapist, Rozzana Verderra-Aligam dated, August 18, 2000.*) The AAO reviewed this assessment but can give little weight to it. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between Mr. and Mrs. [REDACTED] and the therapist. Ms. [REDACTED] assessment was prepared on August 18, 2000, yet the record fails to reflect an ongoing relationship between Mr. [REDACTED] and Ms. [REDACTED] or any other mental health professional. In addition, the assessment does not mention the need for further therapy or medication. For these reasons, little weight can be given to the assessment prepared by Ms. [REDACTED] insofar as it relates to the potential hardship Mr. [REDACTED] will suffer if his wife's waiver application is denied.

Although it is clear that the applicant's husband would suffer emotionally, if she returned to the Philippines and he remained here, or if he left the United States to be with her, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on Mr. [REDACTED], while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

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 husband faces extreme hardship if the applicant is refused admission. 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 hardship experienced by the families of most individuals who are deported.

In this case, based on the documentation in the record, the situation of the applicant's qualifying relative does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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 rests 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.