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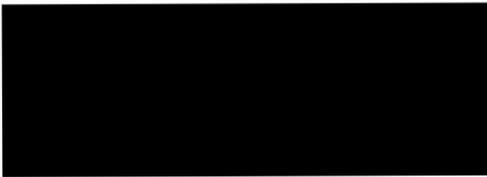
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FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE Date: **NOV 14 2006**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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 waiver application was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his U.S. citizen wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, his U.S. citizen wife, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 2, 2005.

On appeal, counsel for the applicant contends that the district director failed to adequately weigh all of the evidence in support of the applicant's request for a waiver of inadmissibility, particularly the enormous harm to his U.S. citizen wife should he have to leave the United States. *Statement from Counsel on Form I-290B*, filed 30 March 2005; Counsel also submits an Appeal Brief.

In addition to the Appeal Brief, the record contains declarations from the applicant and his wife in support of the Application for Waiver of Ground of Inadmissibility (Form I-601); a copy of the applicant's and his wife's federal tax records for 1999 through 2001; a copy of the naturalization certificate of the applicant's wife; a copy of the applicant's marriage certificate; a copy of the applicant's birth certificate; and a letter confirming the employment of the applicant's wife. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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

The record reflects that on July 10, 1992 the applicant entered the United States using a false document. Thus, the applicant procured admission to the United States by fraud or willfully misrepresenting a material fact. Accordingly, the applicant 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). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to his children is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's U.S. citizen wife is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 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 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 suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship, including emotional and psychological hardship, if the applicant is prohibited from remaining in the United States, stating that the applicant's wife has lived in the United States "for a considerable amount of time" and "could not now relinquish all that she has worked so hard to attain, to live in a country that she left because of the lack of opportunities." *Appeal Brief*, filed April 29, 2005. Counsel further asserts that "[t]he economy of the Philippines is depressed . . . and [the applicant's wife] is over 50 years old. Opportunities for people over the

age of 40 are very slim.” *Id.* In her declaration, the applicant’s wife explains that she has known her husband since 1997, and their relationship is strong; that he has been a wonderful father to her 12-year-old daughter, and that she would lose her emotional support if he were to leave; and that he has been an integral part of her life. *Statement from Applicant’s Wife in Support of Form I-601*, undated, submitted with Form I-601 on May 24, 2002. In his declaration, the applicant states that he came to the United States because of the poor conditions in the Philippines; met, fell in love with, and married his wife several years later; and that they have built a loving trusting relationship together. *Statement from Applicant in Support of Form I-601*, undated, submitted with Form I-601 on May 24, 2002. He adds that his wife will not want to accompany him to the Philippines and he does not know what he will do without her or where he will go; his parents are deceased; his siblings are poor and he sends money to them; and that in the United States he does most of the work around the house because his wife works on the weekends and she will not have anyone to take care of her if he has to return to the Philippines. *Id.*

The record indicates that the applicant entered the United States in 1992; he and his wife were married in 2000. His wife naturalized in 1996, and a letter from the St. Francis Medical Center states that she has been employed there as a Medical Technician since December 1990. Tax forms include a daughter as a dependent. Other than those documents, there is no evidence of how long the applicant’s wife has been residing in the United States or whether she has family ties to U.S. citizens or lawful permanent residents in the United States or family remaining in the Philippines; the record is silent as to economic, social or political conditions in the Philippines. Regarding the financial impact of the applicant’s inadmissibility, tax records indicate that the applicant’s wife had an income of \$117,263 in 2001, the most recent year for which records were submitted; she lists her occupation as clinical scientist. She is able to support herself and her daughter in the United States, regardless of the financial contribution of the applicant; there is no evidence in the record regarding her ability to use her skills and experience in the Philippines or the availability of employment in the Philippines.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. Although counsel for the applicant states that there are no opportunities for the applicant’s wife in the Philippines as a clinical scientist, there is no evidence in the record to support this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Moreover, the applicant’s wife may choose to stay in the United States and continue to work and earn the income to which she is accustomed.

The AAO recognizes that the applicant’s wife will endure hardship as a result of separation from the applicant should she remain in the United States. However, her situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to **prove** extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 individuals being deported.

Again, it is noted that the applicant's wife may relocate to the Philippines with the applicant to avoid the hardship of separation if she chooses, though she is not required to do so. She was born in the Philippines, and there is no evidence in the record that she would be forced to adjust to an unfamiliar culture or language if she returned there; nor is there evidence that she has familial ties in the United States that she would be forced to leave. The AAO recognizes that she would lose her employment in the United States and suffer the resultant economic consequences if she returned to the Philippines. However, there is no documentation regarding conditions in the Philippines that support a conclusion that she and her husband would be unable to meet their financial needs in that country. Moreover, 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.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.