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U.S. Citizenship  
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Services

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FILE:

Office: MANILA, PHILIPPINES

Date:

SEP 18 2006

IN RE:

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:

CONF

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 Acting Officer-in-Charge (OIC), Manila. The matter 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud or willful misrepresentation. [REDACTED] is the fiancée of a U.S. citizen, [REDACTED] and the beneficiary of an approved Petition for Alien Fiancé; she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to join her prospective spouse in the United States.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, her prospective spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated November 22, 2004.

On appeal, counsel for the applicant states that “[t]he Service underestimated the hardship [REDACTED] is suffering due to the inadmissibility of [REDACTED] . . . placed an impermissibly high burden on [REDACTED] for establishing extreme hardship; and . . . [REDACTED] has established that he meets the level of extreme hardship in order to allow for a grant of the waiver application.” *Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, dated December 21, 2004. The record contains, but is not limited to, numerous statements from [REDACTED] his relatives, friends, pastors, and care-givers noting the emotional difficulties he is having because he cannot be with his fiancée and physical problems that have afflicted him for many years and are exacerbated by his current difficulties; medical records dating from 1998 to June 2005 noting a history of treatment for various injuries as well as an emergency room visit in 2004 and two-day hospitalization in 2005; letters confirming [REDACTED] receipt of Social Security Disability benefits and payments from the Graphic Communications International Union Supplemental Retirement and Disability Fund and a summary of expenses and income prepared by [REDACTED] U.S. Department of State Background Note on the Philippines, dated September 2004; and several documents, including from the National Institute of Mental Health, on the symptoms, causes and treatment for depression and heart disease, particularly in the elderly. 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:

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 . . . .<sup>1</sup>

The record reflects that [REDACTED] misrepresented her marital status by concealing a prior unterminated marriage and presenting a fraudulent Certification of No Marriage when she applied for a fiancé(e) visa (“K” nonimmigrant visa) in February, 2001. For this prior misrepresentation, the OIC determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel does not contest this finding.

If an applicant seeking a K nonimmigrant visa is inadmissible, the applicant’s ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General—(1) Filing procedure—(i) Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

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” of the applicant, who in this case is the U.S. citizen prospective spouse of the applicant. 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*, 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, in this case the U.S. citizen husband of the applicant, 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.

“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

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<sup>1</sup> In the case of a beneficiary who is a fiancé(e) who is inadmissible on a ground which could be waived under section 212(i) of the Act, the “qualifying relationship” is to the “prospective spouse.”

associated with deportation.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U.S. courts have 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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to [REDACTED] must be established in the event that he joins his fiancée in the Philippines or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record in this case reflects that [REDACTED] was born in the United States in 1940, in Minnesota; he currently resides in Arizona. [REDACTED] was born in the Philippines in 1968. In an affidavit dated 20 July 2005, [REDACTED] states that he met [REDACTED] over the internet five and a half years ago; and that she works as a caregiver for her aunt in the Philippines. [REDACTED] has visited her several times since they first met. Numerous family members and friends who reside in the United States have written to support his efforts to bring [REDACTED] to the United States; he does not have family in the Philippines. [REDACTED] states that his total income of \$4,800 per month comes from disability payments, including Social Security; he lists his monthly expenses as \$4,142, which includes \$1,000 per month for support to [REDACTED]. A letter from the Social Security Administration indicates that [REDACTED] became disabled on May 8, 1998, and medical records dating from 1998 indicate that he has received treatment for a variety of physical ailments and injuries, including shoulder and back pain from an accident and a rotator cuff injury. Medical records from treatment in Minnesota cover the years from 1998 through early 2004; the doctor of record is [REDACTED] a family practice doctor with HealthPartners Clinics in Minnesota; records indicate that various pain medications and antibiotics were prescribed for [REDACTED] during this time. Other medical records include an Emergency Department Record from the Northwest Medical Center in Tucson, Arizona on December 14, 2005 indicating that [REDACTED] went to the emergency room complaining of headache, sleeplessness and indigestion; he was given prescriptions for Valium, Prilosec and Tylenol; an annotation from the treating physician includes a recommendation for continued treatment for “depression and PTSD.” The most recent medical record is for a two-day hospital stay in Tucson in June 2005 when [REDACTED] was diagnosed with diabetes and dyslipidemia; he was discharged in stable condition with instructions to follow up with his physician in a week and “call if his sugar dropped below 70 or goes above 300.”

Although the record contains many references to the severity of [REDACTED] depression caused by the denial of his fiancée’s visa, and the record includes general background information on the symptoms and causes of and treatment for depression, there is no evidence in the record that [REDACTED] has ever been diagnosed with or treated for depression. Letters from friends, family, pastors and social workers indicate that [REDACTED]

acquaintances can observe that he is saddened due to separation from his fiancée; and his own statements clearly indicate that he wants her by his side to take care of him and that he feels despondent at times because he cannot be with her. A letter from a social worker in Tucson, dated May 18, 2005, refers to “his condition of generalized depression,” but without reference to any medical diagnosis. There are two letters in the record from [REDACTED] doctor in Minnesota, [REDACTED]. The first one, dated December 16, 2004, lists Mr. [REDACTED] various physical disabilities and states that “he was and is currently diagnosed with depression and generalized anxiety disorder. He has worked through a large amount of that especially the depression type with [REDACTED] and this has left him with symptoms of easy fatigability, exaggerated ‘startled’ response.” He writes that he has advised [REDACTED] to “remain within the continental United States in regards to his permanent residence as he needs reoccurring medical attention” and that when he found out that [REDACTED] was going to be married and have somebody with him to help him with his various medical disabilities, he could “think of no better solution in regards to his care.” The second letter from [REDACTED] is dated May 6, 2005. It again lists [REDACTED] physical disabilities and adds that [REDACTED] had treated [REDACTED] for years for his mental status and myself and others will continue to treat him. These will be listed in other documents.”

The AAO notes that neither letter from [REDACTED] is signed; and though there are numerous medical reports of treatment by [REDACTED] in the record, not one indicates a diagnosis or treatment for depression. There is no medical report in the record regarding such diagnosis and no evidence of the existence of or treatment by a [REDACTED]. There is no documentation in the record to show that [REDACTED] has received psychiatric care or evaluation for mental disorders, either before or as a result of his problems related to separation from Ms. [REDACTED]. Despite numerous references to “depression” and to [REDACTED] mental state by [REDACTED] and in letters of support from family and others, “depression” and “PTSD” are referenced only once in a medical report, and that report was prepared as a result of a visit to an emergency room and not in relation to on-going medical treatment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant has not provided sufficient evidence of her qualifying relative’s current mental health status to allow the AAO to weigh this factor in determining whether he will suffer extreme hardship. [REDACTED] letters, lacking his signature and containing discrepancies noted above, are given little weight by the AAO.

Counsel for the applicant relies on the statements noted above in [REDACTED] letter of December 16, 2004, asserting that his observations “are corroborated by various medical reports.” In support of this assertion, counsel refers solely to observations made by the emergency room doctor in relation to the one visit noted above. A comment by an attending physician during an emergency room visit, where the patient complains of headache, indigestion and insomnia, does not comprise “various medical reports” nor does it corroborate a statement that [REDACTED] has been diagnosed with depression. Again, 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 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).

Regardless of the lack of probative evidence noted above, the AAO recognizes that [REDACTED] is suffering because he and his fiancée are unable to live together in the United States as they had planned. Based on his

assertions, it is likely that his insomnia and feelings of depression and other symptoms that he blames on the separation from [REDACTED] would be alleviated if he could live with her and benefit from her love and care; this would be the case whether they lived together in the United States or in the Philippines. In the event that [REDACTED] chose to reunite with [REDACTED] in the Philippines, he would be separated from his family and friends and from the medical care that he now enjoys. However, he would join [REDACTED] and her friends and family; there is no indication that he would suffer financially, as he lives on a fixed income and does not depend on employment; and there is no indication in the record that his various physical disabilities can not be monitored and treated in the Philippines. If he chooses to remain in the United States, he would continue to benefit from the medical services he currently uses and the support of his friends and family; he would, however, also continue to suffer emotional and personal hardships due to separation from [REDACTED]. These are hardships normally associated with family separation. There is no evidence in the record to show additional hardship he would suffer if [REDACTED] were denied a waiver of inadmissibility. His situation, based on the record, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. It appears that [REDACTED] faces the same decision that confronts others in his situation – the decision whether to remain in the United States or relocate to avoid separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if his fiancée 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 inconvenience and hardship experienced by the families of most individuals who are deported.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her qualifying relative as required under section 212(i) of the Act. 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(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.