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[REDACTED]

FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date: DEC 05 2007

IN RE: Applicant: [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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, on August 3, 2001. On September 14, 2004, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen the denial of the appeal. The motion will be granted. The previous decisions shall be affirmed. The waiver application is denied.

The applicant, Ms. [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 admission into the United States by fraud or willful misrepresentation. The applicant is married to Mr. [REDACTED] a naturalized citizen of the United States. Ms. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that Ms. [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated August 3, 2001. Counsel for the applicant submitted an appeal, which the AAO dismissed finding the record failed to establish extreme hardship to the applicant's husband (her qualifying relative) if the waiver application were denied.

On motion, counsel submits additional evidence: two evaluations by Dr. [REDACTED] and the curriculum vitae of Dr. [REDACTED]

The AAO grants counsel's motion.

The applicant seeks a waiver of inadmissibility. 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 to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is her husband. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. 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).

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). As stated by counsel, the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record fails to establish that the applicant's husband would endure extreme hardship if he remains in the United States without his wife.

The October 8, 2004 evaluations by Dr. [REDACTED] a licensed clinical psychologist, convey that the [REDACTED] describe their children [REDACTED] and [REDACTED] as having a severe case of eczema. Dr. [REDACTED] states that [REDACTED] frequently itched his skin and scalp, and all of the exposed areas of his skin were mottled with signs of eczema and scarring from a skin problem. She states that the [REDACTED] stated that Ferly II had a bone infection caused by bacteria entering his body through broken skin and was hospitalized for a week, and now takes oral antibiotics for his skin. Dr. [REDACTED] describes the difficulties the [REDACTED] children experience at school and she describes the concern that the children and their mother have about Mr. [REDACTED] consumption of beer and cognac, and his inability to care for the children as a result of having two jobs. Dr. [REDACTED] states that Ms. [REDACTED] is concerned about losing the family's house and the children not having medical insurance if she returned to the Philippines. Dr. [REDACTED] states that Ms. [REDACTED] indicated that her husband overdosed on medication and ended up in the emergency ward when she left him because of his drinking. With regard to living in the Philippines, Dr. [REDACTED] states that the [REDACTED] claim: they will not be able to find employment due to their age; they will not be able to place the children in a private school where English is spoken; they will be forced to live with 13 people in a small house that has poor water quality and is located in a neighborhood with drug addicts; they will not have health insurance and will not be able to afford to buy medicated cream for their children's skin; they will receive poor medical care; and the weather will aggravate the children's skin problems. Dr. [REDACTED] indicates that Ferly II is panic-stricken about his mother's immigration problem. She states that [REDACTED] will become "very seriously depressed and extremely anxious if her mother were sent back to the Philippines and she remained in the United States with her father and brother." Dr. [REDACTED] conveys that the [REDACTED] state that [REDACTED] is presently being treated by a psychiatrist for depression on account of her eczema and that she had attended an anger management class and was on prozac for a year. Dr. [REDACTED] indicates that the [REDACTED] care for Mr. [REDACTED]'s elderly, ailing mother who is on kidney dialysis.

Although the input of any mental health professional is respected and valuable, the submitted evaluations do not reflect that Ms. [REDACTED] or any mental health professional had an ongoing relationship with the Mendoza children or that the children had any history of treatment for psychological problems. Although the Mendozas claim that [REDACTED] their daughter, was being treated by a psychiatrist for depression and was on prozac for a year, no documentation from the treating psychiatrist has been submitted in support of this claim. 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)). Furthermore, the conclusions reached in Dr. [REDACTED] evaluations do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering Ms. [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO finds that no medical records have been submitted to show that the applicant's spouse's mother is on kidney dialysis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Courts in the United States have stated that "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).

However, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. As held by the BIA, the birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The declaration in the record by Mr. [REDACTED] reflects that he is very concerned about separation from his wife and the impact of her separation on their children. Although Ms. [REDACTED] states that her husband had been taken to emergency for taking an overdose of medication when she left him on account of his problem with alcohol, no documentation has been submitted to substantiate this incident. 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)). The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of Mr. [REDACTED] if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

Mr. [REDACTED] and his wife claim that he will not be able to meet household expenses, including their mortgage, without his wife's income. The AAO finds that the documents in the record are outdated, reflecting the financial status of the [REDACTED] in 1998, which is nine years ago; thus, they are insufficient to support Mr. Mendoza's financial hardship claim. 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)).

The AAO finds that no documentation has been submitted in support of Ms. [REDACTED] claim that her husband will not be able to care for their children on account of his alcohol problem and employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The record is insufficient to establish that Mr. [REDACTED] would endure extreme hardship if he joined his wife in the Philippines.

The conditions in the Philippines, the country where the applicant's husband would live if he joined her, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The Mendozas claim economic hardship stemming from inability to find employment in the Philippines and submit job postings to show that employment is not available to applicants who are 40 years old. Federal court decisions have shown that the difficulties experienced in obtaining employment in a foreign country and the general economic conditions in that country are insufficient to establish extreme hardship. See, e.g., *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the finding that hardship in finding employment in Mexico does not reach extreme hardship); *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment is not extreme hardship).

Although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his children, is a relevant consideration. The record indicates that the applicant and his wife have children who are 13 and 15 years old. With regard to education in the Philippines, Ms. [REDACTED] states that since their children do not speak Tagalog they would need to attend a private school where English is spoken. The AAO finds that no documentation has been provided to establish that English is not the language of instruction in public schools and that the [REDACTED] would not be able to afford to send their children to private school. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, economic detriment alone is insufficient to establish extreme hardship. See, e.g., *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981).

Although the [REDACTED] are concerned about not receiving proper medical treatment and care for their children in the Philippines, no documentation has been furnished to demonstrate that treatment for eczema is not available in the Philippines. 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)). Furthermore, with regard to the level of health care in a foreign country, "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984).

The [REDACTED] state that they will not have health insurance in the Philippines. Loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985).

The AAO notes that the record is inconsistent as to whether [REDACTED] has eczema. Dr. [REDACTED] states that [REDACTED] frequently itched his skin and scalp, and all of the exposed areas of his skin were mottled with signs of eczema and scarring from a skin problem. She reports that the [REDACTED] stated that [REDACTED] got a bone infection caused by bacteria that entered his body through his broken skin. However, Mr. [REDACTED] declaration suggests that [REDACTED] does not have eczema. He states that [REDACTED]'s older brother is fairer and has very smooth healthy skin." No medical records have been submitted to establish that [REDACTED] has eczema and that he was hospitalized for a bone infection. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The [REDACTED] indicate that in the Philippines they will have a lower standard of living, living with 13 people in a small house that has poor water quality and is located in a neighborhood with drug addicts. However, BIA and court decisions have indicated that a lower standard of living does not constitute extreme hardship. In *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996), the BIA stated that "the inability to maintain one's present standard of living" does not constitute extreme hardship. (citations omitted). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. In *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), the Ninth Circuit found that even a significant reduction in the standard of living is not by itself a ground for relief.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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, 8 U.S.C. § 1182(i), the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The previous decision of the district director shall be affirmed.