

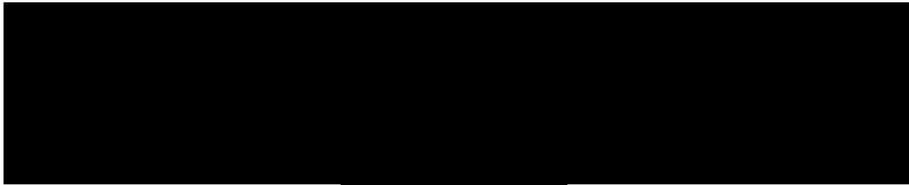
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

H2

**PUBLIC COPY**



FILE:

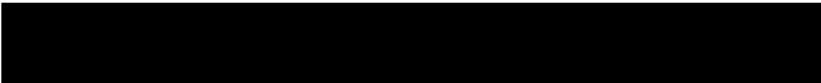


Office: LOS ANGELES, CA

Date:

JUN 01 2007

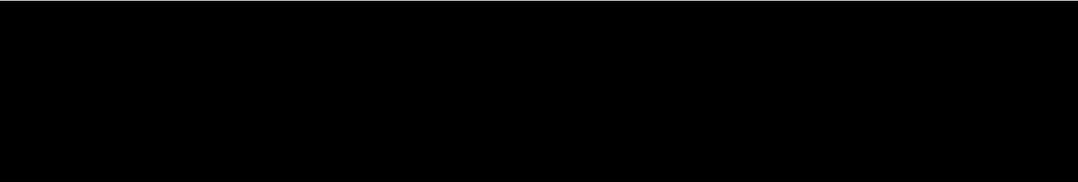
IN RE:



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:



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 waiver application was denied by the District Director, Los Angeles, California and is now before the Administrative Appeals Office (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 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 having procured admission into the United States by fraud or willful misrepresentation in August 1989. The applicant is married to a U.S. citizen and is the mother of a U.S. citizen child. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to remain in the United States with her family.

The district director concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant were removed from the United States. She denied the application accordingly. *Decision of the District Director*, dated December 27, 2004.

On appeal, counsel states that the district director in denying the Form I-601, Application for Waiver of Ground of Excludability, abused her discretion by failing to consider any relevant factors, the cumulative effective of these factors or explain the reasons for her denial. Counsel submits a brief and documentation not previously considered.

The record indicates that on June 11, 2001, the applicant filed the Application to Register Permanent Residence or Adjust Status (Form I-485) based on the Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse, [REDACTED]. At her adjustment interview on May 6, 2002, the applicant testified under oath that she entered the United States in August 1989 by presenting a fraudulent passport and visitor's visa in the name of [REDACTED]. Accordingly, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, the only qualifying is [REDACTED] the applicant's spouse. Hardship the applicant and her U.S. citizen son experience as a result of separation is not considered in section 212(i) waiver proceedings, except as it would affect the applicant's spouse. 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).

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 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 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).

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 aliens being deported.

The AAO notes that extreme hardship to [REDACTED] must be established in the event that he resides 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 AAO now turns to a consideration of the relevant factors in this case.

The record includes the following evidence to establish the applicant's claim that [REDACTED] would suffer extreme hardship if she were to be removed from the United States: counsel's brief, dated January 7, 2005; two statements from [REDACTED] dated June 26, 2002 and January 7, 2005; a January 17, 2005 statement from the applicant; a January 19, 2005 medical certification of the applicant's medical conditions; a January 24, 2005 "Public Announcement" on the Philippines issued by the U.S. Department of State; an undated certification of [REDACTED]'s membership in the Bible Christian Fellowship of Los Angeles; a psychological evaluation of the applicant, dated January 14, 2005; earning statements and tax returns for the applicant and [REDACTED]; monthly billing statements; and documentation related to the purchase of property in Kern County, California by [REDACTED] and the applicant.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to the Philippines. In his brief, counsel asserts that [REDACTED] would suffer emotionally and financially as a result of relocating to the Philippines, and would also face a significant security threat if he moved there. Counsel notes that all of [REDACTED]'s immediate family live in the United States, including his mother, father and three siblings. [REDACTED] he asserts, would find it very difficult to start over in the Philippines where economic conditions are such that finding work is a formidable challenge. Counsel notes that the Department of State's Country Reports on Human Rights Practices-2002 finds that the minimum wage in the Philippines does not provide a decent standard of living. Counsel also reports that [REDACTED] has never lived anywhere but in the United States and does not speak Tagalog. Further, he raises the terrorist threat to U.S. citizens in the Philippines and contends that [REDACTED] would be at high risk were he to move to the Philippines or visit the applicant there. As proof, counsel submits the State Department's Public Announcement on the Philippines noted above. While counsel asserts that the district director failed to consider this warning in her adjudication of the Form I-601, the AAO notes that, prior to appeal, the warning was not included in the record.

In his statements, [REDACTED] contends that he would suffer extreme emotional, physical and economic hardship if he returned to the Philippines with the applicant. He asserts that the separation from his U.S. family would break his heart and that he would also suffer emotionally seeing his son raised in the Philippines, where his opportunities would be limited in comparison to those available to him in the United States. [REDACTED] also points out that he is not familiar with the culture of the Philippines and does not speak Tagalog, which would make it difficult for him to obtain employment as a teacher. The high poverty rate and low wages in the Philippines, [REDACTED] contends, would make it difficult for him and the applicant to support their family. He asserts that his family would have no health insurance in the Philippines, as Philippine employers do not provide medical benefits. The loss of ties to his community, friends and his church would also weigh heavily on [REDACTED]. The applicant states that because [REDACTED] was born and raised in the United States and is not Filipino, he would suffer extreme hardship if he relocated to the Philippines.

The AAO notes [REDACTED]'s assertions that the state of the Philippine economy would make it difficult to find employment in the Philippines and counsel's quote from the State Department report on human rights practices concerning the low minimum wage in the Philippines. However, it finds the record to contain no evidence to support these claims. The applicant has submitted no proof that she and [REDACTED] would be unable to obtain employment in the Philippines or that they would be limited to minimum wage jobs. Moreover, the record does not include evidence that would support [REDACTED]'s claim that his inability to

speaking Tagalog would prevent him from teaching in the Philippines. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *See 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 notes that the website of the Philippine Embassy in the United States reports that while more than 80 indigenous languages and dialects, including Tagalog, are spoken in the Philippines, English and Filipino are the official languages. It also indicates that while Filipino is a required subject in schools, English is more commonly used in higher education and is commonly used in government and commerce. ([www.philippineembassy-usa.org/about/population.htm](http://www.philippineembassy-usa.org/about/population.htm).) The Department of State also indicates that English is widely spoken in the Philippines, that most signs are in English (<http://manila.usembassy.gov/www/htrag.html>) and that nearly all professionals, academics and government workers use English as a second language (<http://www.state.gov/r/pa/ei/bgn/2794.htm>) The record also lacks documentation to support [REDACTED]'s claim that he and the applicant would not be able to obtain health insurance through employment in the Philippines.

While the AAO acknowledges the emotional distress that would be created by [REDACTED] separation from U.S. family, friends, church and community, the record does not document that the effect of such a separation on [REDACTED] would be more severe than on other individuals who choose to join removed family members outside the United States, as required to establish extreme hardship. The psychological evaluation of [REDACTED] provided on appeal focuses solely on the psychological impact of his separation from the applicant.

The AAO acknowledges, however, the security risks highlighted in the submitted public announcement on the Philippines, which recommends that U.S. citizens defer nonessential travel to central, southern and western Mindanao, and the islands of Basilan, Tawi-Tawi, and Jolo, located in the Sulu archipelago in the Philippine southwest. It also notes that more recent country conditions information, specifically the May 23, 2007 Consular Information Sheet issued by the Department of State for the Philippines, warns U.S. citizens against all but essential travel to the Philippines in light of the heightened threat to Westerners. In that the Department of State reports that security risks are countrywide, the AAO finds that relocation to the Philippines at this time would constitute an extreme hardship for [REDACTED].

The second part of the analysis requires the applicant to establish extreme hardship in the event that Mr. Leckner remains in the United States.

Counsel states that the applicant suffers from aortic stenosis and calcific tendonitis of the right shoulder and that her removal would cause [REDACTED] emotional stress as she would have no health coverage in the Philippines. Counsel contends that, as the applicant would probably be unable to find employment in the Philippines or would only find employment at a lower salary, [REDACTED] would be required to support two households, making it difficult for him to care for his family and also pay his mortgage and that he would be in danger of losing his home. Counsel also asserts that as a result of the district director's denial of the applicant's waiver request, [REDACTED] has become extremely depressed. To establish [REDACTED] emotional state, counsel submits a psychological evaluation prepared by [REDACTED] President of the Center for Productive Thinking in Sherman Oaks, California and a clinical psychologist. Although, on appeal, counsel references the district director's failure to consider this evaluation in reaching her decision on the applicant's waiver request, the AAO notes that the evaluation postdates the district director's decision.

In his statements [REDACTED] asserts that he would suffer emotional, physical and economic hardship if he remains in the United States following the applicant's removal, that the emotional loss he would endure if separated from the applicant is incomprehensible and that he would be very depressed.. He contends that if he had to raise his son without the applicant, he would be forced to hire a babysitter or place him in daycare, which would be a financial burden and would cause him to worry about his son's safety and welfare. [REDACTED]

[REDACTED] states that he suffers from the thought that his home will be divided into three parts: his wife in the Philippines, his son being cared for by a stranger and his long hours at work trying to hold his family together. [REDACTED] also notes that the applicant has been with him through tough times and situations, including his December 2000 bankruptcy and the foreclosure on his home.

Turning first to the psychological evaluation of [REDACTED] the AAO notes that [REDACTED] January 14, 2005 report finds [REDACTED] to have reported symptoms that are consistent with the impact of post traumatic stress disorder, as well as adjustment disorder with anxiety and depression. He further concludes that these symptoms will continue until the "originating trauma" is resolved and recommends that [REDACTED] receive "therapeutic treatment" to regain his mental health.

Although the input of any mental health professional is respected and valuable, the AAO finds the submitted evaluation of [REDACTED] to have little evidentiary weight. Based on a single interview, the conclusions reached by [REDACTED] do not reflect the insight and detailed analysis that an established relationship with a mental health professional would provide, rendering them speculative and diminishing the evaluation's value. [REDACTED]'s generic recommendation that [REDACTED] receive therapeutic treatment also lacks the specificity critical to a determination of extreme emotional hardship. Accordingly, the AAO does not find the record to establish the current status of [REDACTED] mental health, or the impact that the applicant's removal would have on his mental health.

Neither does the record support counsel's claims regarding [REDACTED] concerns over the applicant's health should she be removed from the United States. Although counsel claims that [REDACTED] would worry because the applicant would have no medical coverage in the Philippines, the record does not contain any evidence that establishes that the applicant would not be able to obtain employment in the Philippines that would allow her to pay for whatever medical treatment she might require or that she would be unable to obtain medical coverage through her employment. Without supporting documentation, the assertions of counsel will not meet the applicant's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. See *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). Moreover, the AAO notes that [REDACTED] statements do not refer to the applicant's medical conditions, but note only his general concern regarding the lack of health coverage for his family in the Philippines. The medical certification issued on January 19, 2005 by the applicant's physician, [REDACTED], states only that the applicant is under treatment for aortic stenosis and calcific tendonitis of the right shoulder, it offers no indication of the type or level of treatment required or the severity of these conditions.

The AAO acknowledges that the applicant's removal from the United States would make [REDACTED] a single working parent in need of childcare for his son and that such care would involve additional expense and would not be of the quality now provided by the applicant. However, this type of hardship is common when individuals must find ways to care for their children following the removal of a spouse. Counsel's

assertions that the applicant's removal would require [REDACTED] to support two households and potentially result in his inability to pay his mortgage and the loss of his home are, once again, not supported by the record. The only property the record reports as being owned by [REDACTED] and the applicant is 2.5 acres of land in Rosamond, California, described as a real estate investment in an August 23, 2001 letter from the Amberland Corporation to [REDACTED]. There is no documentation that indicates [REDACTED] and the applicant own a home that would be lost if [REDACTED] was unable to pay the mortgage.

While the AAO agrees that the applicant's removal from the United States would have a financial impact on [REDACTED] it does not find the record to demonstrate that this impact would constitute extreme financial hardship. [REDACTED]'s tax return for 2000 reports his annual income as \$32,406. Accordingly, even without assistance from the applicant, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, (<http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>). Moreover, the record, as already discussed, does not establish that the applicant would be unable to support herself in the Philippines and thereby reduce the financial burden on [REDACTED]. The AAO notes that [REDACTED]'s immediate family, all of whom live in the United States, may also be able to assist him financially should the applicant be removed.

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that [REDACTED] would face extreme hardship if the applicant were removed and he remained in the United States. Rather, the record demonstrates that he would experience the distress and difficulties normally associated with the removal of a spouse. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. While, the prospect of separation or relocation nearly always results in considerable hardship to the individuals and families involved, the Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," did not intend that a waiver be granted in every case where a qualifying relationship and, thus, familial and emotional bonds exist. The point made in this and prior AAO 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's removal from the United States. 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 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.