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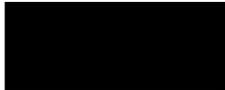
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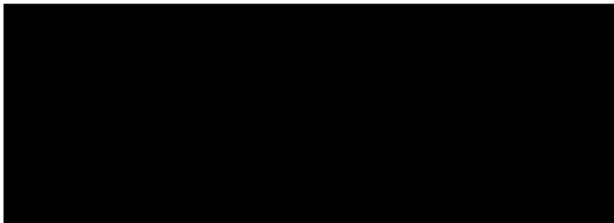
IN RE:

Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, CA, 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 seeking admission into the United States 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), based on her qualifying relative, her naturalized citizen husband (). The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on her husband and accordingly denied the waiver request. *Decision of the District Director*, dated April 14, 2005.

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.

The record reflects that the applicant entered the United States on March 8, 1998 as a visitor for pleasure using a false identify. *Form I-601 and Brief in Support of Appeal*, dated March 29, 2005. Accordingly, she was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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.¹ Hardship to the applicant or to her child 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. The qualifying relative in the present case is the applicant's husband. 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).

¹ The District Director mistakenly stated that the waiver under section 212(h) of the Act applies to the instant case. *Decision of the District Director*, dated April 14, 2005. A waiver for admissibility under section 212(a)(6)(C)(i) is provided at section 212(i) of the Act, 8 U.S.C. § 1182(i).

“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, 564 (BIA 1999). The AAO agrees with counsel in that the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that are 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 564. 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).

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); *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). It is noted the instant case is within the jurisdiction of the Ninth Circuit. Separation from one’s family will therefore be given appropriate weight in evaluating the hardship factors in the present case.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to the applicant’s husband. Extreme hardship to the applicant’s husband must be established in the event that he accompanies 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.

states that all of his family members live in the United States. Counsel states that the applicant and her husband built a strong life together, they are expecting a child, and the applicant is completely dependent on her husband for financial and emotional support. He states that the applicant is not working due to her pregnancy and a prior miscarriage. Counsel contends that the applicant and her husband will not be able to meet their financial obligations in the United States without their combined income. Counsel refers to *Tukhownich v. INS*, 64 F.3d 460 (9th Cir. 1995) and *Matter of U*, 5 I&N Dec. 413 (BIA 1953) to show that economic detriment is a factor bearing on a extreme hardship determination.

The AAO agrees with counsel's assertion that financial impact is a hardship consideration. However, the record as constituted contains no evidence corroborating [REDACTED]'s assertion that he will be unable to meet monthly household expenses in the United States without his spouse's income. The record reflects that Mr. [REDACTED] earns \$21,840 annually. *Letter from [REDACTED]* dated April 27, 2004. It contains evidence of rental payments (\$475/monthly), a Cingular invoice (\$80.00 monthly charge), and water bills (under \$50.00 monthly). This evidence does not prove that [REDACTED] is not able to meet monthly household expenses, however. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 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.

With regard to the birth of a child who is a United States citizen, the general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that 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 has 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 a per curiam decision, *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. Thus, the fact that the applicant is expecting to give birth to a child in the United States, is not sufficient in itself to establish extreme hardship.

Counsel states that *Matter of Liao*, 11 I&N Dec. 113, 116 (BIA 1965) and *Matter of Koojoory*, 12 I&N Dec. 215, 219 (BIA 1967) indicate that conditions of the country to which the alien and his or her family will be returning are relevant in determining hardship. Counsel indicates that if [REDACTED] relocates to the Philippines, his family will not have proper medical care. Counsel contends that [REDACTED] will have to abandon his family in the United States, his employment, and his stable life in American and start over in a completely foreign country. Counsel states that [REDACTED] will not find employment in the Philippines and is not fluent in Tagalog. Counsel states that the Philippines is dealing with Muslim extremism, which will be a danger faced by the applicant and her husband and child.

The AAO agrees with counsel's assertion that the conditions of the country to which [REDACTED] will be returning is a relevant hardship consideration. However, the economic hardship claims of not finding employment in the Philippines and not having proper medical care benefits do not reach the level of extreme hardship. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985). It is noted that there is no evidence in the record relating to the availability of employment in the Philippines or evidence that specifically relates to [REDACTED] to establish that he will not find employment there. No evidence in the record reflects that Mr. [REDACTED] suffers from health problems and that suitable medical care is unavailable in the Philippines. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra*. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, *supra*; *Matter of Ramirez-Sanchez*, *supra*.

Furthermore, in a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit stated that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra*. In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA finding that petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute "extreme hardship and that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship." As previously stated, the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang, supra*.

On appeal, counsel states that *Prapavat v. INS*, 638 F. 2d 87, 89 (9th Cir. 1980) lists additional factors that entail hardship such as "the combination of uprooting, cultural shock, forced liquidation of business and home, substantially diminished educational and economic opportunities, and the improbability that they could immigrate to this country legally." Counsel asserts that *Prapavat* indicates that an alien's inability to immigrate to the United States by any other means, and its impact upon the relatives remaining behind, is a hardship factor to consider. He states that the applicant has no other way, besides her immediate relative petition, to immigrate to the United States to be with her husband and child. Counsel states that the applicant is a person of good moral character.

The AAO finds that some of the *Prapavat* factors do not apply to the factual situation here. For example, there will be no forced liquidation of business and home and [REDACTED] has an infant, not a six-year-old child attending school as in *Prapavat*. The AAO has already discussed [REDACTED]'s uprooting and cultural shock. *Prapavat* is a suspension of deportation case, which is a case type that requires considering whether there are other means to adjust status in the United States. A hardship determination under section 212(i) of the Act, 8 U.S.C. § 1182(i), which is being examined here, does not entail determining whether the applicant has other avenues in which to immigrate to the United States legally.

According to counsel, the cases of *In re O-J-O, supra*; *Matter of Lum*, 14 Int. Dec. 3280 (BIA June 1996); and *In re Maria Elena Lozano-Reyes*, 5 I&N Dec. 413 (BIA 1953) reflect that acculturation to the American lifestyle is a hardship factor. He states that the applicant would not be able to adapt to life in the Philippines as she has lived in the United States for over seven years, which include her formative years.

As previously stated in this decision, hardship to the applicant or to her child 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. The BIA indicated that the hardship factors relate to the applicant's "qualifying relative." *Matter of Cervantes-Gonzalez* at 565-566.

To show that psychological and emotional hardship must be considered, counsel cites to *Barrera-Leyva v. INS*, 637 F.2d 640, 644 (9th Cir. 1980); *Antoine-Dorcelli v. INS*, 703 F.2d 19, 21 (1st Cir. 1983); and *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). The AAO agrees with counsel that psychological and emotional hardships are important factors to consider in determining hardship. The AAO is also mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. With the circumstances here, the AAO finds that Mr. Ragsa's situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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). The Ninth Circuit in *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. The record before the AAO is insufficient to show that the emotional hardship to be endured by [REDACTED] upon separation from his wife if he remains in the United States, is unusual or beyond that which is normally to be expected upon deportation.

On appeal, counsel discusses the “extreme hardship” standard in *Ramos v. INS*, 695 F.2d 181 (5th Cir. 1983)(consider relevant hardship factors in the aggregate, rather than in isolation in determining whether extreme hardship exists) and *Hernandez-Corero v. INS*, 783 F.2d 1266, 1269-1270 (5th Cir. 1986)(the cumulative effect of many hardships, each deemed not in itself sufficient, may make their total weight extreme); the standard for exercising agency discretion in *Yehdego v. INS*, 159 F. 3d 429 (9th Cir. 1988)(in balancing factors, weigh favorable and unfavorable by evaluating all of them, assigning weight or importance to each one separately and then all of them cumulatively); and the “humanitarian approach” of the Foreign Affairs Manual.²

As previously stated in this decision, the BIA has stated that the factors to consider in determining whether extreme hardship exists provide a framework for analysis, and that the relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. 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. *Matter of O-J-O-*, *supra*, (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994). Thus, the AAO agrees with counsel in that the hardship factors are considered both individually and in the aggregate in determining whether extreme hardship exists in a case.

Thus, 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 deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation 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 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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.

² Counsel cites to the *Foreign Affairs Manual* section 40.63, N1.3 and section 40.301, N1.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.