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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NEWARK, NJ

Date: MAY 02 2007

IN RE:

PETITION: 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 PETITIONER:

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, Newark, NJ, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering into the United States by using a fraudulent passport and visa. The applicant, who is the wife of a naturalized citizen husband, sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director concluded that the applicant failed to establish extreme hardship would be imposed on a qualifying relative, in this case her husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated January 16, 2002. On appeal, counsel references a letter from [REDACTED] affidavits, and a letter from the applicant's church to establish extreme hardship.

In rendering this decision, the AAO has considered the entire record of proceeding.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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 chapter is inadmissible.

....

- (iii) Waiver authorized  
For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 using a fraudulent passport and visa at New York, New York, on February 19, 1996. *Notice of Intent to Deny*, dated November 26, 2001; *Form I-601*. The director correctly found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for using fraudulent documents to gain admission into the United States.

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 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 here 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).

"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 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.

It is noted that extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant abroad, and in the alternative, that he or she remains in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 AAO will now apply the *Cervantes-Gonzalez* factors here in determining extreme hardship to the applicant's husband. Extreme hardship to the applicant's husband must be established in the event that he remains in the United States; and in the alternative, that he accompanies the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The affidavits of [REDACTED] the husband of the applicant, state the following. He was born on May 3, 1925, is 76 years old, and is a widower. He resides with the applicant and his daughter. He has asthma and hearing loss in his right ear. He has income of \$397 each month from social security. He was devastated by his first wife's death in 1996. Meeting the applicant has helped him emotionally and financially. The applicant receives income as a part-time babysitter. The applicant does not have a historical disregard of the immigration laws of the United States. If his wife leaves the country, he would suffer from the melancholy despair he experienced when his first wife died.

The affidavit of the applicant states, in part, that she married her husband on September 5, 1997 and that she met him in December 1996 when they were neighbors.

The record contains affidavits from [REDACTED], the nephew of the [REDACTED]s first wife, who states that the applicant takes care of his daughter.

The document from [REDACTED], internal medicine – cardiology, states that [REDACTED] suffers from asthma, chronic lung disease, and hard hearing.

The certification from [REDACTED] confirms that the applicant regularly attends his church and is of good moral character.

The record does not establish that the applicant's husband will endure extreme hardship if he remains in the United States without his wife.

Financial impact is a hardship consideration. However, the record as constituted contains no evidence establishing that the applicant's income from babysitting is required for the applicant to meet monthly household expenses. The record contains no evidence of the household expenses and income of the applicant's husband. It has no evidence of his wife's and daughter's income, although his daughter lives with him. 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.

The document from [REDACTED], indicates that [REDACTED] suffers from asthma, chronic lung disease, and hard hearing. There are no medical records describing the severity of his health problems. There

is no evidence establishing that [REDACTED]'s daughter, who resides with him, is not available to care for him. 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 applicant's husband will undoubtedly experience hardship if separated from his wife. The AAO is mindful of and sympathetic to the emotional hardship that results from separation from a loved one. However, the AAO finds that his 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. Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra*. Furthermore, [REDACTED] will not be alone in the country: he has a daughter who resides with him.

The record does not indicate that [REDACTED] will endure extreme hardship if he joins the applicant in the Philippines.

The conditions of the country to which the alien and his or her family will be returning are relevant in determining hardship. However, 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). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5<sup>th</sup> 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 (9<sup>th</sup> Cir. 1980), the Ninth Circuit upheld the BIA's 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*.

Here, there is no evidence in the record specifically relating to the applicant and her ability to find employment in the Philippines. The record reflects that the applicant's husband has health problems; but it does not establish that medical treatment for asthma, chronic lung disease, and hard hearing 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*.

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(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(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.