

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

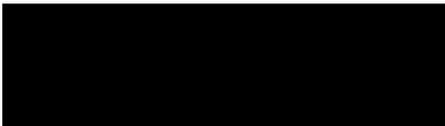
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3100
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2



FILE:

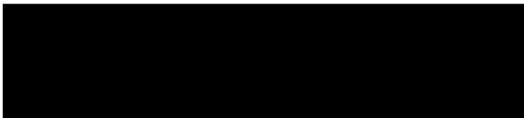


Office: SAN FRANCISCO

Date:

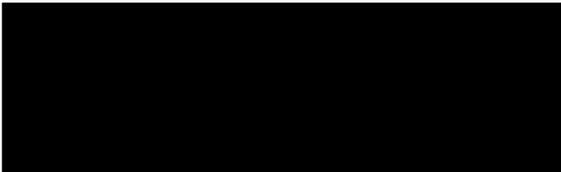
OCT 18 2007

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), 8 U.S.C. section 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, San Francisco, 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 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 to the United States by fraud or willful misrepresentation, and Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for more than one year. The applicant is the beneficiary of an approved Petition for Alien Relative Petition (Form I-130) filed by her U.S. citizen spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and parents.

The record reflects that the applicant used a passport and visa bearing the name [REDACTED] to gain admission to the United States as a tourist on October 7, 2001. The applicant and her husband, [REDACTED], were married in the United States on November 23, 2002. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on April 18, 2003. The petition was approved on January 13, 2004. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on February 13, 2003 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 9, 2004.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated July 20, 2004.

In a brief submitted on appeal, counsel contends that the denial of the waiver application will result in extreme hardship to the applicant's spouse, a native of the United States who does not speak any of the native languages of the Philippines or have any significant ties to that country. Counsel asserts that the applicant's spouse is a private investigator who would be unable to find similar employment in the Philippines. Counsel maintains that the applicant's spouse suffers from diabetes, high blood pressure and sleep apnea, and is therefore dependant on the health insurance provided by the applicant's employer as well as personal care from the applicant, a certified nursing assistant and home health aide. Counsel asserts that the applicant's spouse would be unable to get proper care in the Philippines if he relocated there or insurance in the United States if the applicant is removed. Counsel points out that the applicant has been denied medical insurance in the past. Counsel also asserts that the applicant's parents are U.S. citizens who live near the applicant and would suffer without her.

The record contains supporting statements from the applicant's spouse and father; medical records for the applicant's spouse accompanied by general information concerning his conditions; medical insurance documentation for the applicant and her husband; a copy of the deed for the applicant's house accompanied by mortgage documents; copies of the applicant's spouse's private investigator licenses; bank and tax records for the applicant and her spouse; copies of identification documents for the applicant's parents. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
 - (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The AAO notes that there is no evidence in the record showing that the applicant departed from and subsequently sought re-admission to the United States after her entry on October 7, 2001. Consequently, there is insufficient evidence to support the district director's finding that the applicant is admissible under section 212(a)(9)(B)(i)(II) of the Act.

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 used a passport and visa bearing the name- [REDACTED] to gain admission to the United States as a tourist on October 7, 2001.

A waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse and parents are the only qualifying relatives. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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 associated with deportation.

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

The Ninth Circuit Court of Appeals has 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). 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. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any psychological consequences would constitute extreme hardship when considered with other hardship factors. The hardship presented in this case is in large part economic. The applicant's spouse asserts in his supporting statement that he needs the health insurance provided by the applicant's employer, that he relies on the applicant's care as a nursing assistant for his medical problems and that he will face financial difficulties maintaining the payments on his house without the applicant's income. He claims that he will not be able to obtain medical insurance on his own as evidenced by the refusal of two insurance

companies to extend coverage to him in the past.

The AAO recognizes that, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

However, the applicant's spouse has submitted no evidence showing that he has been denied insurance coverage or demonstrating that he will be unable to obtain health insurance should he lose the coverage provided by the applicant's employer. The AAO acknowledges that the applicant may help her spouse in coping with his diabetes, high blood pressure and sleep apnea by monitoring his diet, exercise and use of a Continuous Positive Airway Pressure (CPAP) device during sleep. However, there is insufficient evidence in the record showing that the applicant requires the assistance of the applicant in her role as a certified nursing assistant and home health aide. For example, information from the American Academy of Family Physicians submitted by the applicant does not indicate that use of CPAP device requires assistance of any kind for the patient. *See* [REDACTED] in addition, though the applicant's spouse has submitted documentation regarding his various medical conditions, there is nothing from a physician explaining the significance of the documentation or presenting a current analysis of the applicant's spouse's medical condition. The AAO does not possess the expertise to evaluate the documentation and is, therefore, unable to determine what, if any, assistance is required of the applicant. Finally, although the applicant has submitted evidence showing that she is employed, there is no evidence showing her current income and the extent to which the applicant, who receives income through his work as a private investigator, depends on this income to meet his financial obligations. Indeed, counsel states in his brief that although "it would be very expensive for [the applicant's spouse] to pay for his medical treatment, medicines and equipment, without insurance, it would still be possible, albeit difficult, for him to do so in the United States."

Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Likewise, the assertion made by counsel and the applicant's spouse that he will be unable to find employment or obtain proper medical care in the Philippines are not supported by the evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported 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). Although the applicant has no significant ties to the Philippines, he has also indicated that he has no immediate family in the United States. There is insufficient evidence showing that the hardship the applicant's spouse would experience if he chooses to relocate to the Philippines would go beyond the common results of removal or inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has also not shown that denial of the waiver will result in extreme hardship to her parents. In his supporting statement, the applicant's father states only that he and the applicant's mother "would also miss seeing her and her husband very much." He adds that if the applicant returns to the Philippines, "we would help her in any way possible, money, clothes, etc." Such assertions are insufficient to show that the situation of the applicant's parents is different from most individuals separated as a result of removal or inadmissibility and it does not rise to the level of extreme hardship based on the record.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse and parents 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.