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FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of the Philippines, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, 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 husband and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband would suffer extreme hardship if the applicant were required to return to the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States, fraudulently, on January 11, 1986 by presenting a counterfeit United States passport. Thus, the applicant made a willful misrepresentation of a material fact (her immigration status) in order to procure entry into the United States. As the applicant entered the United States via fraud, she is 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). The applicant does not dispute her inadmissibility. Rather, she is filing for a waiver of her inadmissibility.

The record contains references to the hardship that the applicant's United States citizen children would suffer if the applicant were removed from the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress did not include

extreme hardship to a United States citizen or lawful permanent resident child in section 212(i) waivers. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's United States citizen husband is the only qualifying relative, and hardship to the applicant or her children cannot be considered, except as it may affect the applicant's husband.

Thus, the first issue to be addressed is whether the applicant's return to the Philippines would impose extreme hardship on her husband. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

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 record reflects that the applicant's husband is a fifty-year-old citizen of the United States. He and the applicant have been married since January 5, 1988 and have two United States citizen children.

In his November 13, 2002 affidavit, the applicant's husband states that he will suffer extreme hardship if the applicant is removed to the Philippines; that the thought of his family being torn apart causes him much pain; that the emotional loss he would suffer if he were separated from the applicant would be incomprehensible; that he would worry for the applicant's safety if she were to return to the Philippines;

that the couple's children would suffer hardship if the applicant were removed to the Philippines; that it would be heartbreaking if the children were forced to choose between the applicant and their lives in the United States; that his mother, sisters, and the couple's friends are in the United States, and to be detached from his family, friends, and lifestyle would cause hardship; that he would suffer economic hardship if the applicant were removed to the Philippines; that he would face difficulty obtaining employment in the Philippines; that the applicant would not be able to obtain employment in the Philippines; that he and the applicant have accumulated substantial debt in the United States and must pay \$1,500 per month in mortgage payments on their properties, as well as \$1,200 per month in car loan payments; that the applicant's income is critical to the family's well-being; and that he works long hours and is unable to provide his children with the attention they deserve.

In a December 29, 2005 appellate brief, counsel states that, if the applicant is removed, her husband "may become severely depressed"; that, if he returns to the Philippines, he will be forced to give up the life he has built in the United States; that the District Director denied the waiver applicant without looking at the specifics of their marital and familial bond, which is not a casual relationship; that the applicant's husband's mother and siblings, all of whom are United States citizens, live within minutes of the family, and that leaving them would constitute extreme hardship; that the applicant's husband depends upon the applicant for emotional and financial support; that separation from the applicant would extend beyond mere separation or financial difficulties; that loss of the applicant's salary, should she relocate to the Philippines, would result in extreme hardship as the couple must pay \$1,500 per month in mortgage payments on their properties, as well as \$1,200 per month in car loan payments;¹ that the District Director failed to consider the totality of the circumstances in this case; and that the terrorist threat to American citizens in the Philippines is high. In summary, counsel states the following:

Applicant has shown that her husband would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. [REDACTED]*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, 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

¹ The applicant has submitted documentation that shows the couple has mortgages on two properties, with monthly payments of [REDACTED] and [REDACTED]. The applicant has also submitted documentation that shows the couple makes two monthly car payments: a loan payment in the amount of [REDACTED] and a lease payment of [REDACTED].

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.")

The Ninth Circuit Court of Appeals has stated that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also that, "[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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to return to the Philippines, regardless of whether he would accompany her to the Philippines or remain in the United States without her.

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 husband will face extreme hardship if the applicant returns to the Philippines. If he remains in the United States without the applicant, the record fails to establish that he would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship he would face would be any greater than that normally be expected upon separation. The fact that the applicant's husband would have difficulty paying the couple's outstanding mortgages on two properties and large car payments does not establish extreme hardship. The applicant has submitted copies of her husband's paystubs, which indicate that he earns \$1,154 per week, or approximately \$60,008 per year. While not luxurious, such a salary is not consistent with a finding that the applicant's husband would be "deprived of the means to survive" or "condemned to exist in life-threatening squalor." That he may be required to sell one of the couple's properties or eliminate one of the cars is not synonymous with a finding that he would face economic hardship greater than that normally experienced by those facing the removal of a spouse.

The AAO also notes that the applicant's children are currently sixteen and eighteen years of age. If the applicant were removed to the Philippines, her husband would not face the costs of daycare. Moreover, the applicant has failed to establish why her husband's extended family, all of whom are claimed to live in the immediate vicinity, would be unable to assist the applicant's husband in attending to the children's needs in the absence of the applicant.

Counsel has provided no evidence from any medical authorities to support her assertion that the applicant's husband may become severely depressed if the applicant is removed to 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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).

While counsel states that the applicant's husband "will be placed in the tragic position of choosing between joining his spouse or remaining in the United States and pursuing his dreams" if the waiver application is denied, the AAO notes that such a choice does not constitute extreme hardship beyond that normally experienced by those facing the removal of a spouse. Rather, every person facing the removal of a spouse faces such a tragic choice. Counsel is correct in her assertion that, in the Ninth Circuit, "hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship." However, in this case the applicant has, again, not established that her husband would face hardship greater than that normally experienced by those facing the removal of a spouse.

Nor has the applicant included established that, if her husband were to join her in the Philippines, he would experience hardship beyond that normally expected upon relocation to another country. The AAO notes that the applicant's husband was born in the Philippines and, according to his testimony, arrived in the United States in 1983, as an adult. As noted previously, in *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) the court stated that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances." Nor has the applicant submitted documentary evidence to support the assertion that her husband would be unable to locate employment in the Philippines.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. [REDACTED]*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the District Director properly denied this waiver application. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the removal of a wife.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her husband would suffer hardship unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the

financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.