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*H2*

[REDACTED]

FILE: [REDACTED]

Office: LOS ANGELES, CA

Date:

SEP 20 2007

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

**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*

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. The record reveals that the applicant entered the United States in February 1992 using a passport and a United States visa containing an assumed name. The applicant 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his lawful permanent resident wife and two U.S. citizen children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *Decision of the District Director*, dated September 14, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case. In support of the appeal, counsel submits a brief, dated November 10, 2005; a copy of the applicant's marriage certificate and photographs of the marriage ceremony; copies of the U.S. birth certificates for the applicant's two children; copies of the baptismal certificates for the applicant's two children; evidence of the children's school enrollment; a letter from the applicant's priest with respect to the applicant's family's membership with the Catholic church and supporting evidence of the applicant's family's church participation; and a psychological evaluation regarding the applicant's spouse, dated October 25, 2005. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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 (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...

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court 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). 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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

To begin, references are made to the applicant's two U.S. citizen children and the hardship they would face were the applicant removed. As stated by counsel, the children "...have made their lives here in the United States and that taking that away from them would cause them great sadness..." *Brief in Support of Appeal*, dated November 10, 2005. Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse, a lawful permanent resident, is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may 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).

Counsel further contends that the applicant's spouse will suffer emotional hardship if the applicant is removed from the United States. As the applicant's spouse states in her declaration, "...emotionally, the toll on me would be beyond measure. He's [the applicant's] my backbone. He supports me in everything I do. I rely on him in everything I do. It is with his love and support that I have been able to become the person I've always strived to be. He has made me a better person, a better wife and better mother...I know that if he were not around I would be devastated..." *Declaration of* [REDACTED] dated May 10, 2004.

In support of the applicant's spouse's statements, counsel offers a psychological evaluation from [REDACTED] Licensed Psychologist, based on an interview she conducted with the applicant's spouse on October 14, 2005. In said evaluation, [REDACTED] confirms that the applicant's spouse "...is experiencing 'Severe Range' of depression and anxiety. Elevated levels of both depression and anxiety...indicate that she is currently amidst great emotional turmoil and tension...The high levels of anxiety interfere with functions related to information processing and have a tendency to result in poorly planned behavioral responses to environmental pressures. Such an inability to meet life's demands adequately can then exacerbate her feelings of dysphoria and result in poor coping skills. [REDACTED] [the applicant's spouse] has identified one or more statements reflecting suicidal ideation. The combination of suicidal thoughts and high levels of depression and anxiety is a clear danger signal...If [REDACTED] [the applicant] is returned to the Philippines, [REDACTED] would find herself losing the support that he provides...Certainly a loss she may not be able to overcome, particularly because of the intensity of the feelings she holds towards him and [REDACTED]'s current level of depression and poor coping skills. [REDACTED] is currently under psychotropic medication (Prozac and Trazodone). Her doctor has prescribed these medications to help her deal with the severe stress and depression she is currently undergoing...It is my professional recommendation that [REDACTED] should be in the United States with her husband, children and family..." *Psychological Evaluation by [REDACTED], Licensed Psychologist, dated October 25, 2005.*

An evaluation provided by a psychologist based on a one-time interview does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, although the psychologist has determined that the applicant's spouse is depressed and possibly suicidal, the psychologist makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions or other treatment, and/or increased medications, to further support the gravity of the situation. Finally, it has not been established that the applicant's spouse's situation is extreme as she is able to maintain long-term, full-time employment as a dental assistant, as documented by her Forms W-2 Wage and Tax Statements for 2002 and 2003 and the letter provided by her employer on May 12, 2004 confirming the applicant's spouse's employment.

The psychological evaluations of the applicant's spouse show that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. 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 INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. U.S. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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).

In addition, the applicant’s spouse, in her statement, references the financial hardship she would experience were the applicant removed from the United States. As the applicant’s spouse states, “. . .I could not afford to make the mortgage payments on our home solely on my income. If my husband left the United States, I would most certainly have to sell our home and move into an apartment. . .It would be a great disruption to our family to sell the home. My husband works as a dental assistant. . .The family health insurance is through my husband’s employer since my employer does not offer such benefits. If my husband had to leave the United States, my children and I would lose our health benefits. . .not having health insurance would leave us open to potentially catastrophic medical liability. . .Without my husband’s income, I would not be able to afford private health insurance. . .In general, without my husband’s income, I would have a very difficult time making ends meet. . .The calm and stability that our children and I enjoy would be shattered. . .” *Supra* at 2.

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. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

It has not been established that the applicant’s spouse would be unable to find another job as a dental assistant that would give her access to affordable health insurance, as the applicant has been able to do. Although the applicant’s spouse may need to make alternate arrangements with respect to her employment and housing situation, it has not been established that such arrangements would cause her extreme hardship. Moreover, counsel provides no evidence to substantiate that the applicant, a dental assistant, would not be able to assume a similar position, relatively comparable in pay and responsibilities were he to relocate to the Philippines, or any other country of his choosing, thereby assisting the applicant’s spouse with the household expenses. 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)).

In the alternative, counsel asserts that the applicant's spouse will suffer extreme hardship were she to accompany the applicant to the Philippines. As stated by counsel, the applicant's spouse has strong ties to the United States. Her two daughters were born in the United States, and her entire family including her parents, siblings, nieces and nephews all reside in the United States, with the exception of one sibling to whom she has no relation. As counsel states, "[redacted] has always been close to her parents and currently relies on them to care for her children..." *Brief in Support*, at 7. As [redacted] states in her evaluation "...both of her [the applicant's spouse's] parents are ill and elderly and [redacted] helps to care for them and to take them to their medical appointments..." *Supra* at 6. No corroborating evidence has been provided to confirm the involvement and interaction that the applicant's spouse has with her family, and most specifically with her parents, such as affidavits from them outlining their need for the applicant's spouse's continued physical presence in their lives, nor has any corroborating evidence been provided to confirm that the applicant's spouse would suffer extreme hardship were she apart from her family. 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).

Moreover, counsel states that the applicant's spouse would not be able to find employment in the Philippines due to the country's poor economic situation. No evidence has been provided to establish that the applicant and the applicant's spouse, both born and educated in the Philippines, would be unable to find employment that would also provide health insurance so that the applicant's spouse may be able to continue treatment for her mental and physical conditions.

Finally, counsel states that the applicant's spouse is deeply devoted to the Catholic Church and wants her children to have a Catholic education; as asserted by counsel, relocating to the Philippines would put the applicant's desires at risk due to the high costs of private education. *Brief in Support*, at 8. No corroborating evidence has been provided to establish that the applicant's spouse and her family would be unable to continue their membership and active participation in the Catholic Church. Nor has any evidence been provided to document that the costs of attending parochial school in the Philippines would be prohibitive to the applicant and his family.

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 will face extreme hardship if the applicant is removed. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is no documentation establishing that her financial, emotional or psychological hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional and psychological hardship she would face rise to the level of "extreme" as contemplated by statute and case law.

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) of the Act, the burden of proving eligibility remains entirely with the

applicant. 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.