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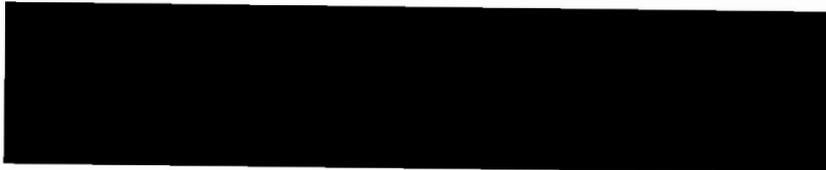
Date: APR 15 2008

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Sacramento, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The field office director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly.

On appeal, counsel states that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to thoroughly analyze the facts and evidence in the case, including evidence of extreme physical, economic and emotional hardship to the applicant’s husband. Specifically, counsel asserts that the applicant’s husband is firmly settled in the United States, would be unable to find work in the Philippines, would have no access to adequate medical care in the Philippines, and would face danger there due to the presence of terrorist groups. *See Brief in Support of Appeal* at 4-8. Counsel additionally asserts that the applicant’s husband would suffer extreme emotional hardship if he remained in the United States and were separated from the applicant, who was pregnant at the time the appeal was filed, and their U.S. Citizen child due to be born in December 2007. Counsel further asserts that separation from family alone constitutes extreme hardship and states that if the applicant is removed from the United States, “their marriage [will] probably end up in a divorce.” *Brief* at 12-15.

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 Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. 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.

Counsel's assertion that separation from family in and of itself establishes extreme hardship is unconvincing. Counsel relies on *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), and *Contreras-Buenfil v. INS*, 712 F.2d 401 (9th Cir. 1983), to support this assertion. In these decisions, however, the court held only that it was an abuse of discretion not to consider the hardship that family separation would impose and stated that family separation may be "the most important single [hardship] factor" in determining whether extreme hardship would result from deportation of a family member. *See Contreras-Buenfil, supra*, at 403 (quoting *Mejia-Carillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981)). Counsel also refers to the Ninth Circuit decision, *Mejia-Carillo v. INS, supra*, to support the assertion that separation from family alone constitutes extreme hardship. A review of this decision reflects that the case involves an application for suspension of deportation in which hardship to the alien was a factor to be considered. Furthermore, even within the context of a suspension of deportation case, the court never stated that separation from family alone establishes extreme hardship, but rather that separation from family alone **may** establish extreme hardship. *Id.* at 522. However, the court did not make a finding regarding whether the applicant's separation from family established extreme hardship, but instead remanded the case to the BIA for consideration of all the non-economic hardship factors present, including separation from family.

In the present case, the record reflects that the applicant is a thirty-nine year-old native and citizen of the Philippines who has resided in the United States since March 2004, when she entered using a fraudulent Philippine passport and U.S. visa issued in the name [REDACTED]. The applicant's husband is a forty-

one year-old native of the Philippines and naturalized U.S. Citizen who has resided in the United States since 1983. *See declaration of [REDACTED], Exhibit 8.* According to documentation submitted by counsel in support of the waiver application, the applicant's husband was injured in a car accident on March 31, 2007 and was treated and released by the hospital the same day. *See Exhibit 12.* Additional documentation indicates he is unemployed and was awarded unemployment benefits beginning April 8, 2007 and ending April 5, 2008. *See Exhibit 10.* According to his affidavit, the applicant's husband has one U.S. Citizen son who resides with him and the applicant, has enlisted in the army, and will report for duty after his high school graduation in June 2008. *See Exhibit 22.* Documentation was also submitted indicating the applicant was pregnant and that the baby was due on about December 31, 2007. *See Exhibit 21.*

The field office director found that although the applicant's husband asserted in his declaration that he would be forced to leave a well-paying job if he relocates to the Philippines, the evidence submitted indicated that he was collecting unemployment benefits due to the termination of his job. Further, although the applicant presented evidence suggesting that her spouse was unable to work due to an automobile accident, this documentation stated that the applicant's husband should expect to "feel completely better in a week or two." In addition, the applicant's spouse claimed that he had been married to the applicant for over one year and that before they met he had been diagnosed with anxiety and depression. He stated that once they married these conditions were under control, but that they would likely recur if he is separated from his wife. The field office director noted in his decision that the applicant was only married to her spouse for three months at the time she applied for adjustment of status. Further, no evidence was submitted to establish that the applicant's husband has suffered from anxiety or depression. Lastly, the field office director noted that although evidence was submitted documenting security risks to U.S. Citizens in the southern areas of Mindanao and the Sulu Archipelago, the applicant is from the far northern section of the Philippines, where these risks do not appear to be present.

The record in the instant case indicates that the applicant's husband worked as a machine operator from February 28, 2005 to about April 2007, when he began collecting unemployment benefits. *See Exhibits 9 and 10.* Although he asserts that he was rendered unable to work because of injuries suffered in a car accident, the medical evidence submitted states that the applicant's husband should have been able to return to work in about three days, or by April 5, 2007. *See Sutter Tracy Community Hospital Discharge Instructions, dated March 31, 2007, and St. Joseph's Medical Center Emergency Department, Discharge Diagnosis and Instructions, dated April 1, 2007, Exhibit 12.* As the applicant is currently unemployed, the record does not support his claim that he is "going to leave a job that pays well" if he departs the United States to join his wife. Further, although documentation about the economic situation in the Philippines was submitted, the information cited by counsel, including statistics such as the unemployment rate, local currency value, and the country's "investment-to-GDP ratio" is very general and does not provide any specific information about the employment prospects of the applicant's spouse. The evidence does not establish that the applicant's husband, a native of the Philippines who resided there until he was seventeen years old, would not be able to find work comparable to his previous employment in the United States as a machine operator. Further, any economic hardship or decline in standard of living that the applicant's spouse might experience in the Philippines would be a common result of deportation. Moreover, 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.

Counsel also asserts that because the applicant's husband has resided in the United States for twenty-four years and his mother and sister both reside here, relocating to the Philippines would create extreme emotional hardship for the applicant. No evidence was submitted concerning these family ties, such as how much time the applicant's spouse spends with his family members or how close they reside to the applicant. Further, although the applicant's spouse has a son who currently resides with him and the applicant, evidence submitted indicates that he has enlisted in the army and will report for duty on June 11, 2008. *See Exhibit 22*. It appears that the separation of the applicant's spouse from his family members would be the type of unfortunate, but expected, hardship that occurs whenever a spouse is removed from the United States and, when combined with any economic detriment he would experience, would constitute common results of deportation or exclusion. *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).

Counsel submits medical records regarding injuries suffered by the applicant's spouse in a car accident on March 31, 2007. Counsel asserts, "He must have regular check-ups, maintenance treatment, and therapy to resume normal functions." *Brief at 6*. Counsel further states,

With his disability, he needs [REDACTED] more than ever, and it will be 'extreme' hardship for him if ever E [REDACTED] is removed from the U.S. [REDACTED]'s treatments could be maintained and continued only through his U.S. health insurance coverage. . . [REDACTED], as a veteran of foreign wars, benefits from his medical program provided by the U.S. Army. . . Again, [REDACTED]'s health is seriously at risk outside the U.S. *Brief at 6*.

As noted above, the documentation submitted indicates that the applicant's husband was injured in a car accident, but was advised he could return to work after three days. There is no medical evidence on the record stating that he requires any ongoing treatment or therapy as a result of these injuries. Further, there is no evidence on the record that the applicant's husband has health insurance coverage in the United States. The documents submitted, including copies of the applicant's husband's armed forces and Department of Veterans Affairs identification cards and discharge papers from the army, provide no information about any medical benefits he might receive as a veteran. 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).

Lastly, as noted in the decision of the field office director, although evidence on the record indicates there are security risks to U.S. Citizens due to the presence of terrorist groups in the southern areas of Mindanao and the Sulu Archipelago, the applicant is from the far northern section of the Philippines. The evidence submitted includes a U.S. State Department Travel warning, which states, While travelers may encounter such threats anywhere in the Philippines, the southern island of Mindanao and the Sulu Archipelago are of particular concern." *See Exhibit 20*. A Consular Information Sheet describes the possibility that Americans

or westerners may be targets of terrorism at locations where they might congregate, shop, or visit, such as hotels, beach resorts, places of worship, or schools. *See Exhibit 15*. However, these warnings discuss possible threats to various locations frequented by tourists and westerners in general. The evidence submitted contains very general warnings of possible terrorist threats in the Philippines, and there is no indication that the applicant's spouse would be in any specific danger if he relocated to the Philippines.

In addition, the applicant's spouse asserted that he had been married to the applicant for over one year and that before they met he had been diagnosed with anxiety and depression. He stated that once they married these conditions were under control, but that he would likely suffer from these conditions again if he is separated from his wife. The record indicates that the applicant married her husband on November 15, 2006, about eleven months before the waiver application was denied. Further, no evidence was submitted to establish that the applicant's husband was ever diagnosed with or treated for anxiety or depression. The evidence does not establish that any emotional harm the applicant's husband is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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, exists. Counsel further states that the applicant needs his wife now "because he is currently under disability benefits due to a serious motor vehicle accident." *Brief at 5*. As noted above, there is no evidence on the record that the applicant is unable to work. Rather, the documentation submitted by counsel indicates that the applicant was treated for his injuries and released the same day, and that he was advised he could return to work after three days. *See Exhibit 12*.

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996); *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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.