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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES (SANTA ANA) Date:

JUL 25 2008

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, Chief
Administrative Appeals Office

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

The applicant, [REDACTED] is a native and citizen of the Philippines who 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 seeking admission into the United States by fraud or willful misrepresentation. Mr. [REDACTED] the applicant's spouse, is a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director of services denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director of Services*, dated October 8, 2005. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that in 1999 the applicant gained admission into the United States by presenting to an immigration inspector a fraudulent B-2 visa and passport under an assumed name; she had purchased the documents for USD\$3,000. Thus, the record establishes that the applicant's inadmissibility under section 212(a)(6)(C) of the Act.

The section 212(i) waiver for fraud and misrepresentation states 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. Once extreme hardship is

established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers 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 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

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).

Extreme hardship to the applicant’s spouse must be established in the event that he remains in the United States without the applicant, and in the alternative, that he joins the applicant to live in the Philippines. 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 contains, among other documents, birth certificates, a marriage license, affidavits, school records, a Medical Psychiatric Diagnostic Interview Examination by [REDACTED] information from the U.S. Department of State and the Central Intelligence Agency (CIA) on the Philippines, a court judgment, a monthly budget, income tax records, employment letters, photographs, and a psychological assessment and recommendation by [REDACTED]

On appeal, counsel states that the district director failed to consider the relevant factors described in *Matter of Cervantes-Gonzalez* in determining hardship. Counsel states that [REDACTED] who is a naturalized citizen of the United States, has lived here for 15 years; and that his mother and sisters are naturalized citizens, his brother is a lawful permanent resident, and his two daughters were born in the United States. He states that [REDACTED] has a close relationship with her stepdaughters, providing for them emotionally and financially. Counsel states that [REDACTED] would experience extreme hardship if he were separated from his daughters. Counsel claims that there is a terrorist threat to American citizens in the Philippines according to the U.S. Department of States and that [REDACTED] would worry about the safety of his family in the Philippines. Approximately 40 percent of the population in the Philippines, counsel states, lives in poverty. He states that [REDACTED] is concerned about finding employment in the Philippines because he lacks educational

credentials or specialized skills and how this would affect his ability to financially support his daughters. Counsel states that pursuant to a marital settlement agreement, [REDACTED] has a monthly child support obligation of \$505 and is required to pay \$100 each month for medical and dental insurance, and that Mr. [REDACTED] relies on the applicant's income to meet those obligations. Counsel points to the reports by Ms. [REDACTED] to establish extreme hardship to the applicant's husband if the waiver application were denied. Counsel states that [REDACTED] may not be able to receive the treatment he needs in the Philippines, as recommended by [REDACTED], because of the lower standard of medical care there, as shown in the U.S. Department of State report. Counsel states that when the hardship factors are considered cumulatively, extreme hardship to [REDACTED] established.

The payment statement ending November 7, 2005 by Pizza Hut shows garnishment of \$97.19 for child support. The payment statements by AppleOne Employment Services, dated October 2004, for [REDACTED] show weekly deductions of \$155.70, \$174.55, and \$162.80 for child support; and net pay after deductions of \$194.30, \$227.54, and \$204.70. The billing statement dated November 1, 2005, for [REDACTED] by the Los Angeles Country Court Trustee shows a balance due of \$8,847.68 and a monthly payment of \$756.25.

The September 3, 2004 letter by Prime Time Shuttle conveyed that [REDACTED] is an independent contractor, owner-operator of three vans with them.

The letter dated November 2, 2004 by Affordable Nursing Care and Services certified that [REDACTED] is employed as a temporary worker since August 2004 with a salary of \$600 each week.

The evaluation dated November 3, 2004 by [REDACTED] indicated that [REDACTED] works in the Building Department for the City of Long Beach under a contract with a private company, a position which [REDACTED] has held for approximately one year. The evaluation describes the results of tests, and the close relationship of the [REDACTED] and how [REDACTED] would be impacted if the waiver application were denied.

The affidavits by [REDACTED] dated November 1, 2004 and December 1, 2005, are summarized as follows. [REDACTED] is a driver for Pizza Hut and a counter in a casino. His monthly income is \$385 and his wife's is \$1,200. His wife is studying to become a licensed vocational nurse. They have \$2,864 in total monthly expenses. [REDACTED] has two daughters, born on [REDACTED] and [REDACTED], from a prior marriage. His youngest daughter lives with him. Pursuant to a court order, he must pay \$605 each month in child support and requires his wife's financial assistance to meet the obligation. He and his wife have difficulty meeting their monthly expenses. He cannot bear the thought of separating from his daughters if he were to live in the Philippines. His wife loves and cares for his daughters and she helped them emotionally during the divorce. He would not find employment in the Philippines because of its economic conditions and his lack of educational credentials or specialized skills. He does not know what will become of him if his wife returns to the Philippines without him. He states that the stress of his wife's possible removal caused him to consult a licensed clinical psychologist on November 18, 2005.

In the evaluation dated November 23, 2005, [REDACTED] diagnosed [REDACTED] with major depression (single episode severe) and separation anxiety disorder, caused by the impact of the possibility of separation from his wife. He indicates that [REDACTED] stated that he has daily fatigue, trouble sleeping, and difficulty thinking and focusing; is less active socially, and feels depressed all the time.

The documentation on the Philippines by the U.S. Department of State discusses safety and security concerns, medical facilities and health information, crime information, and travel warnings. The Central Intelligence Factbook conveys that 40 percent of the population in the Philippines lived below the poverty line in 2001.

The marital settlement agreement filed with the Los Angeles Superior Court in 2003 indicated that Mr. [REDACTED] must pay each month \$100 for medical and dental insurance and \$505 for child support until his daughters attain age 19 or age 18 and are not a full-time high school student. The children are to spend 80 percent of their time with their mother and 20 percent with [REDACTED] daughters were born on June 23, 1990 and October 20, 1993.

The monthly budget shows total monthly income of \$1,585 and monthly expenses of \$2,864.

The record contains a \$300 check, dated 2005, from We Care Private Nurses to [REDACTED]

The AAO finds that the record fails to establish extreme hardship to [REDACTED] if he remained in the United States without the applicant.

[REDACTED] asserts that his wife's income is needed to meet household expenses and pay his child support obligation. The AAO, however, finds that the documentation in the record is not sufficient to establish that [REDACTED] has made and will continue to make financial contributions for household expenses. Other than the employment letter dated November 2, 2004 by Affordable Nursing Care and Services and the \$300 check by We Care Private Nurses, the record contains no other documents, such as income tax records or pay statements, to show that [REDACTED] has made, and will continue to make, financial contributions to the [REDACTED] household income. 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)). As constituted, the record fails to demonstrate that Mr. Quilala requires his wife's income to meet monthly expenses.

With regard to the evaluation of the applicant's husband by [REDACTED] in November 2005 and the evaluation by [REDACTED] a year earlier, although the input of a mental health professional is respected and valuable, the AAO notes that each evaluation is based on a single interview with [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] or any history of treatment for the depression and anxiety he is said to experience. Moreover, the conclusions reached by Dr. [REDACTED] in his evaluation and those reached by [REDACTED] in her evaluation are based on a single interview; consequently, the conclusions do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering their findings speculative and diminishing their value in determining extreme hardship to [REDACTED].

[REDACTED] indicates that he and his daughters have a close relationship with his wife. Family separation is important in determining hardship. Courts have stated that "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 (9th Cir. 1991), the Ninth Circuit upheld the 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The record conveys that [REDACTED] is very concerned about separation from his wife. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. **After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which he will experience, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra.***

In considering the hardship factors raised here, both individually and cumulatively, the AAO finds that they fail to extreme hardship to the applicant’s husband in the event that he remained in the United States without his wife.

The record is insufficient to establish that the applicant’s husband would experience extreme hardship if he were to join his wife to live in the Philippines.

[REDACTED] claims that he will not find employment in the Philippines on account of its economic condition and his lack of education and job skills. He states that he will experience extreme hardship if he is unable to provide the requisite financial support for his daughters, who would continue to live in the United States if he were to join the applicant to live in the Philippines. The AAO notes that according to the terms of a custody arrangement, [REDACTED] child support obligation ends when his daughters attain the age of 19 or 18 and are not a full-time high school student. [REDACTED] oldest daughter is now 18 years old and his youngest, who he claims now lives with him, is 14 years old.

Although the CIA document conveys that approximately 40 percent of the population in the Philippines lives in poverty, “[g]eneral 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)). The record does not establish that the applicant or her husband would be unable to obtain any employment if they returned to the Phillipines.

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 removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal 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(i) 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.