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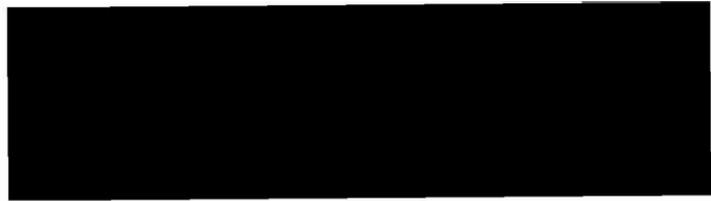
FILE: [REDACTED] Office: LOS ANGELES, CA

Date: SEP 18 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:



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, 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 1998 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, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 19, 2005.

In support of the appeal, counsel submits a brief, dated April 8, 2006; statements from both the applicant and his spouse; evidence of the applicant's spouse's lawful permanent resident status; a copy of the applicant's marriage certificate; copies of the U.S. birth certificates for the applicant's two children; photographs of the applicant and his family; financial documentation, including recent pay stubs, for the applicant and his spouse; copies of the applicant's professional certifications; a psychological evaluation regarding the applicant's spouse, dated March 25, 2006; and human rights information pertaining to the Philippines. 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.

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.

Counsel 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,

...I can't imagine my life if ever my husband [the applicant] will be removed from the U.S. and go back home to Philippines. I don't think I will survive emotionally, psychologically and financially. He is a part of my life and our children's lives. Right at this moment we have a strong foundation because we are all together. He is the great source of love and support... Taking him away from us would be very traumatic to me.... And I don't want to go through another depressing moment in my life. When I lost my father, I lost the most important man in my life and now if ever my husband will be sent back to Philippines, I will be losing another important person in my life, a part of my life, my everything....

...I don't think I can survive being a mom and dad at the same time. If those things happen every moment that our kids enjoyed at the present will all be gone.

And I don't think I can function normally once I don't have my husband with us.... It's going to be extremely hard for me to function again. It might be like having a terminal sickness. I will be emotionally unstable. I don't think I can take care of our kids and be able to concentrate with my job. I'd rather be sick rather than being emotionally tortured if my husband will be taken away from us.....

Declaration of [REDACTED] dated April 8, 2006.

In support of the applicant's spouse's statements, counsel offers a psychological evaluation from [REDACTED], Ph.D., Psychologist, based on an interview he conducted with the applicant's spouse on March 15, 2006. In said evaluation, [REDACTED] concludes that the applicant's spouse is experiencing "...Adjustment Disorder with depressed mood that can be considerably exacerbated by forcible separation from her husband (permanent or temporary) or any drastic, traumatic change of her social environment. This might trigger feelings of past and present grief and abandonment well beyond normal feelings of adjustment, possibly causing symptoms of Major Depressive Disorder.... it is recommended that she seek individual psychotherapy with a qualified, culturally competent professional to address her unresolved feelings of grief and abandonment...." *Psychological Evaluation by [REDACTED], Ph.D.*, dated March 25, 2006.

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 makes recommendations, in his letter of March 2006, for her to seek individual therapy, the record does not contain any documentation that establishes the applicant's spouse's current treatment, its short and long-term treatment plans, and 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 full-time gainful employment in the nursing industry, as documented by the copies of pay stubs provided by counsel and by the applicant's spouse's declaration. *Supra* at 1.

The psychological evaluation of the applicant's spouse shows 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 (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).

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 work from 7 am to 3 pm and [redacted] [the applicant] takes care of our kids while I’m at work and I do the same thing while he’s a [sic] work from 3 pm to 11 pm.... Being a full time nurse and a full time parent are so stressful...

My husband is a good provider to us. What’s going to happen if I will be working by myself. I can’t come up with the amount that we needed for the monthly expenses we have, not unless I have to work 2 jobs but what’s going to happen to our kids and to myself. I won’t be able to spend quality time with them because I will be for sure always tired/exhausted if I will work 2 jobs. And who’s going to take care of them? I don’t want to leave both of them to a sitter and exhaust myself to do double job just to cope with our finances....

Supra at 4-5.

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.”); *Shooshtary 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 affordable care for her children and/or an alternate work schedule, thereby ensuring that she earns sufficient income to support the household and at the same time, has quality time with her two children. 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 nurse, would not be able to assume a similar position, relatively comparable in pay, were he to relocate to the Philippines, or any other country of his choosing, thereby assisting the applicant's spouse with the U.S. household expenses. Finally, the record indicates that the applicant's spouse has siblings that reside in the United States; it has not been established that they would be unable to assist her, either financially or with the care of her children, should the need arise. 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)).

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad, based on the denial of the applicant's waiver request. As stated by the applicant's spouse,

...We might have another option of going with him or stay with him in Philippines. But I don't think it's a good idea because we started as family here in the U.S. and this is where we build our dreams as a couple and now as a family.... There's no hope and bright future for our kids there because of economic and political issues in Philippines. And its not safe for our kids to stay there because of the place is not a 'home' for them. They were both born here and they only get used with the lifestyle here.

In Philippines, I don't think me and my husband can find a good job over there because of economic problems. There are still people who are jobless despite the fact that they have a degree. Maybe we can find a job but I don't think our income is good enough for our children's future especially now that cost of living is getting high....

Supra at 6.

No evidence has been provided to establish that the applicant and/or the applicant's spouse, both born and educated in the Philippines, would be unable to find gainful employment in the Philippines. Moreover, it has not been established that the applicant's spouse would suffer emotional hardship were she to return to the Philippines. In fact, the record indicates that both her mother and a sibling live there; presumably, she would have support from them, her husband and her two children. Finally, it has not been established that the applicant's two young children would suffer extreme hardship relocating to the Philippines, which in turn would cause the applicant's spouse hardship. As referenced above, assertions without supporting documentary evidence do not suffice to establish extreme hardship.

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. The waiver application is denied.