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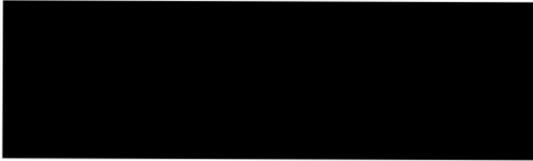
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: MANILA, PHILIPPINES Date: **APR 23 2008**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, Philippines, 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 who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States with a K-1 fiancé(e) visa on July 15, 1991 and was required to depart the United States by October 15, 1991 if she had not married the U.S. citizen petitioner. The applicant did not marry the petitioner. She married a lawful permanent resident on December 26, 1997, and her spouse became a naturalized United States citizen on December 17, 2004. The applicant remained in the United States until January 2006, when she traveled to the Philippines to apply for an immigrant visa. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with her spouse.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Specifically, counsel claims that CIS failed to consider several factors related to the hardship the applicant’s husband would suffer if the applicant is denied admission to the United States. Counsel further asserts that the evidence in the case, including additional documentation submitted with the appeal, supports a finding of extreme hardship to the applicant’s husband should the applicant be denied permission to return to the United States. Specifically, counsel maintains that the emotional and psychological harm caused by his separation from his wife and any potential economic hardship would constitute extreme hardship to the applicant’s husband. Further, counsel states that the applicant’s husband would suffer extreme economic and emotional hardship, in part based on the effects of relocation on their two U.S. citizen children, if he were to relocate to the Philippines.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
 - (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien’s departure or removal from the United States, is inadmissible.

- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The AAO notes that the record contains several references to the hardship that the applicant's children would suffer if they were to relocate to the Philippines. Section 212(a)(9)(B)(v) of the Act provides that a waiver of section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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 *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. 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 states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's husband if she were denied admission to the United States. In support of the appeal, counsel has submitted a note from the applicant's husband's doctor, a letter from a psychologist evaluating the effects of relocation on the applicant's children, academic records and other records concerning the applicant's two children, and reports on economic and social conditions in the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant resided in the United States from July 1991 to January 2006, when she traveled to the Philippines to apply for an immigrant visa. She met her husband in October 1991 and they began residing together in December 1991. See applicant's affidavit in support of I-601 application, Exhibit

2, dated January 10, 2006. They have two U.S. Citizen children, a daughter born on September 9, 1992 and a son born on November 12, 1993. See *Exhibit 5 in support of I-601 application*.

The record further reflects that the applicant's husband is a native of the Philippines who has resided in the United States since May 1984. He is employed as a pick-up and delivery driver for a freight company. See *affidavit of [REDACTED] Exhibit 4*, dated January 10, 2006. The applicant's husband claims to be suffering from anxiety and depression due to being separated from his wife, and documents submitted in support of the appeal indicate that his physician provided him with antidepressants in May 2006 to help with symptoms of anxiety and insomnia. See *Exhibit A*. Records submitted in support of the appeal indicate that the applicant's daughter is a good student who was selected for the honor society at her middle school and that her son has been placed in special education programs because of a learning disability. See *Exhibits 12 and 13 in support of I-601 application*.

Counsel asserts that since his separation from the applicant, the applicant's husband has suffered from severe depression. The applicant's husband states that the thought of losing his wife causes him to suffer anxiety and depression, and that he fears he will lose his job and his health will deteriorate if the applicant has to remain in the Philippines and he remains in the United States. The AAO notes, however, that there is no evidence on the record that the applicant's husband has been diagnosed as suffering from anxiety or depression. The only documentation referring to this condition is a hand-written note from a doctor at the Plaza Family Medical Group stating that the applicant's husband had complained of insomnia and anxiety, and that after discussing possible treatment options, they decided "to try [an] antidepressant for [a] short term basis." See *note from [REDACTED], Exhibit A*, dated May 4, 2006. The AAO notes that the submitted note states the applicant's husband complained on one occasion of experiencing anxiety and insomnia. It appears that the applicant's husband had not previously sought treatment for his symptoms before the denial of his wife's waiver application despite the prospect of being separated from his wife, and there is no evidence of any ongoing treatment for any psychological condition.

Counsel also states that if the applicant's children stay in the United States with their father, "they will lack the care, protection, guidance, and nurturing that only a mother can provide," and an "already emotionally and psychologically unstable man" would be forced "to take on the role of provider and mother and father." *Brief* at 11. As noted above, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for depression or any other condition that would prevent him from caring and providing for his children if his wife remains in the Philippines. 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 Obaighena*, 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). The evidence does not establish that the anxiety 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 distress caused by being separated from his wife is not in question, 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 familial and emotional bonds exist.

Counsel further asserts that if he relocated to the Philippines, it would be difficult for the applicant’s husband to find work comparable to his job as a driver earning \$53,000 per year in the United States. Counsel refers to the 2005 Country Reports on Human Rights Practices and other information submitted and states that they provide sufficient proof of a lack of opportunities and lower standard of living in the Philippines. *See Brief at 8*. To further support that relocation to the Philippines would cause *extreme financial hardship*, counsel submitted copies of bank and credit card statements, vehicle registration documents, and life insurance policies, stating, “USCIS should not force [REDACTED] and her husband to liquidate any of their assets.” The AAO notes that although he has resided in the United States for some time, the applicant’s husband is a native of the Philippines and there is no indication that he does not speak Tagalog or other evidence to support the assertion that he would be unable to find work in Philippines. Although it appears likely the applicant’s family would suffer a decline in their standard of living if they relocated to the Philippines, this is the type of hardship to be expected as a result of deportation or exclusion. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (stating that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (stating that separation of family members and financial difficulties alone do not establish extreme hardship).

Counsel additionally asserts that hardship to the applicant’s two children must be taken into consideration because their suffering will contribute to the hardship experienced by the applicant’s husband. Counsel asserts that the children will experience hardship because of the poor quality of education in the Philippines, and because they are not familiar with the culture or language of the Philippines. In support of this assertion counsel has submitted documentation concerning the quality of education in the Philippines and the cost of attending certain private schools, colleges, and universities there. *See Exhibits G and H*. In support of this assertion counsel submits a letter from a psychologist who met with the family to “evaluate the possible psychological effects on the children, U.S. Citizens, if [the applicant’s husband] were sent to the Philippines.” *See letter from [REDACTED], Exhibit B*, dated April 20, 2006. The letter does not provide the date the evaluation took place, but it appears it was about five years ago, as it states the children, who are now fifteen and fourteen years old, were ten and nine years old at the time. The letter describes the special educational needs of the applicant’s son. It further states that the applicant and her husband “noted that Philippines have extremely limited special education services available for children,” and concludes that because of the lack of adequate educational services, their son, “would have tremendous difficulty functioning or developing academically in the Philippines.” Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant’s family and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s children. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship.

The emotional effects of serious hardship to a qualifying relative’s child could be considered in assessing a claim of extreme hardship to the qualifying relative. The evidence in the present case, however, is not sufficient to establish the applicant’s son’s learning disability is so serious that relocation to the Philippines

would result in extreme hardship to the applicant's husband. In addition to the report from [REDACTED] counsel also submitted with the waiver application report cards, language and speech and psychoeducational assessments, and other school records. See *Exhibit 13*. The assessments, which were conducted in 1998, 2001, and 2004, provide very detailed analysis of the results of various language, memory, and other tests. The most recent report states that the applicant's son appears to be functioning within the average range of ability and states that his "current language needs can be addressed in his general education setting." See *Report from [REDACTED] School psychologist, Exhibit 13, dated April 1, 2004*. The overall meaning of much of the information in the numerous reports provided, including test scores and terminology related to a battery of tests, is not easily discernible. No specific evidence was submitted with the appeal to explain the current condition of the applicant's son, such as a letter in plain language from his school psychologist or speech therapist describing the nature of the disability, his current therapy or special educational programs, and any special educational or therapy programs expected to be necessary in the future. The AAO is not in a position to evaluate psychological and developmental test results and reach conclusions concerning the future education needs of the applicant's child.

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. The emotional and financial difficulties that the applicant's husband would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. 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 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. The court in *Hassan v. INS*, *supra*, further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.