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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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H4

FILE:

Office: MANILA, PHILIPPINES

Date:

JAN 09 2006

IN RE:

APPLICATION:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), 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 Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more subsequent to April 1, 1997. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse.

The record reflects that the applicant has admitted that she entered the United States without inspection in July 1997 and remained in the United States until departing for the Philippines on December 2003. The applicant married her husband, [REDACTED], a naturalized U.S. citizen, on December 9, 2004 in the Philippines. On December 28, 2004, the applicant's spouse filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary. The petition was approved on February 2, 2005. The applicant filed an Application for Immigrant Visa (DS-230) on June 8, 2005. She filed an Application for Waiver of Grounds of Excludability (I-601) on October 6, 2005.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated January 31, 2006.

On appeal, counsel contends that the OIC erred in finding the applicant inadmissible under section 212(a)(9)(B)(i) because the applicant never requested or was granted voluntary departure, but left the United States without being detained or subject to removal proceedings. Counsel asserts, in the alternative, that the applicant's spouse is experiencing and will continue to experience extreme hardship in her absence. Counsel maintains that the applicant has become close with her spouse's daughter, who misses the applicant. Counsel asserts that the applicant relied on the applicant to help care for his daughter. Counsel also maintains that the applicant's spouse needs his spouse's "physical assistance and emotional comfort" to deal with his parents' medical ailments. Counsel observes that the applicant has submitted medical records detailing the medical conditions of her husband's parents. Counsel also notes that the Philippines is politically unstable, which causes the applicant's spouse to worry for her safety.

Counsel asserts that should the applicant's spouse choose to reside in the Philippines, he will have a difficult time finding employment with only a high school education and will suffer emotionally from being separated from his ill parents.

The appeal contains statements by the applicant and medical records for her spouse's parents. The entire record has been reviewed in rendering a decision on the appeal.

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 the Secretary of 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 [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 record reflects that the applicant has admitted that she entered the United States without inspection in July 1997 and remained in the United States until departing for the Philippines on December 2003. There are some indications in the record that the applicant may have been admitted in B-2 status in July 1997, with an authorized period of stay expiring six months later. Regardless, the evidence shows the applicant was not in lawful status from either July 1997 or early 1998 through her departure in December 2003, a period in excess of one year. The applicant is now seeking admission to the United States.

Counsel's argument that the applicant is not inadmissible is without merit. Counsel has cited no authority to support her argument that inadmissibility under section 212(a)(9)(B)(i)(ii) of the Act applies only to individuals granted "voluntary departure" by the Attorney General (Secretary of Homeland Security). Furthermore, the term "voluntary departure," or a form of this term as used in the Act and in regulation to signify a specific form of relief from removal, is not found in section 212(a)(9)(B)(i)(II) of the Act. The applicant accrued unlawful presence for a period in excess of one year, departed the United States, and is now seeking admission within 10 years of the date of her departure. Therefore, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, her stepdaughter and her in-laws is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions

where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U.S. courts have 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); *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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as 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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse suffers emotionally as a result of separation from the applicant. However, the applicant has submitted insufficient evidence showing that the psychological consequences of separation in this case constitute extreme hardship when considered with other hardship factors. The applicant has not demonstrated that her spouse’s obligations to his daughter and his parents constitute extreme hardship that would be alleviated by the applicant’s presence. The applicant has submitted medical records for his parents, but there is no explanation of these records from competent medical authority to establish the seriousness of their conditions or the impact on the applicant’s spouse. The hardship described by the applicant’s spouse is the typical result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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 applicant has not demonstrated that her husband would suffer hardship if he relocated to the Philippines. Statements by the applicant that her husband will be unable to find adequate employment in the Philippines are not sufficient to meet her burden of proof. Although the statements by the applicant are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)). Likewise, counsel’s assertions concerning conditions in the Philippines are not probative. Without documentary evidence to support a 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).

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. 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(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.