U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H2

FILE: [redacted] Office: SAN FRANCISCO Date: AUG 0 8 2006

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, San Francisco, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her U.S. citizen husband and child.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 29, 2004.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated May 27, 2004. Counsel contends that the district director erroneously focused on economic factors in the applicant's case, and failed to adequately consider other instances of hardship to the applicant's husband. *Id.*

The record contains a brief from counsel in support of the appeal; statements from the applicant, the applicant's husband, the applicant's mother-in-law, and the applicant's sister-in-law; two evaluations of the applicant's husband's psychological health from licensed psychologists; documentation on conditions in the Philippines; a letter attesting that the applicant has no criminal record in Alameda County, California; documentation from a school that the applicant's husband intends to attend; evidence that the applicant's husband purchased an automobile; a copy of the applicant's birth certificate; copies of the applicant's Form I-94 and passport; a Form I-864, Affidavit of Support, submitted by the applicant's husband on her behalf; a letter verifying the applicant's husband's employment; tax records for the applicant's husband; a copy of the applicant's marriage certificate; a copy of the applicant's daughter's birth certificate; a copy of a bank statement for the applicant and her husband, and; a copy of the applicant's husband's naturalization certificate. 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.

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 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 record reflects that the applicant married her husband on December 28, 1998. She subsequently applied for a B-1/B-2 Visa at the United States Embassy in Manila, Philippines. Though her husband was residing in the United States at the time, she represented on her visa application that her husband was in the Philippines. Upon arriving at a port of entry on December 14, 2001, the applicant told an immigration inspector that she wished to enter the United States to visit friends, and she failed to reveal that her husband was residing in the United States. The applicant was admitted in B-2 status as a visitor for pleasure on December 14, 2001, with permission to stay until June 13, 2002. The applicant has not departed the United States since that date, and she filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on July 30, 2003.

The fact that the applicant failed to reveal that her husband was residing in the United States in her B-1/B-2 visa application or upon her entry was a material misrepresentation. An individual is only eligible for B-1 or B-2 status if she intends to enter the United States for a temporary period. When the applicant misrepresented the location of her husband, she cut off the material line of inquiry to determine whether she intended to join her husband in the United States for an indefinite period of time. As the applicant entered the United States and filed a Form I-485 application to become a permanent resident, the record strongly suggests that she in fact intended to enter the United States for an indefinite period at the time she applied for a B visa and admission at a port of entry, an intent not permitted by B-2 status. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact. Accordingly, 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). The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, the applicant states that she and her family members will experience extreme hardship if they return to the Philippines. *Statement from Applicant*, dated June 23, 2004. She provides that all of her husband's relatives are in the United States. *Id.* She indicates that her husband will have difficulty finding work in the Philippines, and that her family would be without health insurance. *Id.* The applicant states that her daughter was born premature, and she requires medical attention that can only be obtained in the United States. *Id.* The applicant explains that her husband has severe emotional and physical depression, and that he is being treated by their family physician and a psychologist. *Id.*

The applicant's husband indicates that he and his daughter will face extreme hardship if the applicant departs the United States. *Statement from Applicant's Husband*, dated June 23, 2004. He provides that he is currently experiencing mental health problems including anxiety and a loss of appetite, and he is currently being treated by a physician on a regular basis for mental health conditions. *Id.* The applicant's husband states that he wishes for his daughter to have a mother figure, and thus she needs to be with the applicant. *Id.* He provides that he and his daughter would not receive sufficient medical care in the Philippines. *Id.* The applicant's husband states that he wishes to continue his education, yet he cannot focus on his studies with his current mental health status. *Id.* The applicant's husband expresses that he is close with the applicant, and he does not wish to be separated from her. *Id.*

The applicant submits a letter from [redacted] a licensed psychologist, in which [redacted] indicates that he interviewed the applicant's husband over two 1.5 hour sessions. *Letter from* [redacted] dated June 14, 2004. [redacted] symptoms that the applicant's husband reported, including a depressed mood, anxiety, loss of appetite, insomnia, and less exercise and personal grooming. *Id.* [redacted] expressed his opinion that the applicant's husband's self-reported symptoms indicate a diagnosis of major depressive episode, single incident, mild. *Id.* He anticipates that the applicant's husband's symptoms will become more pronounced if the applicant and his daughter depart the United States. *Id.* [redacted] recommends consultation with a psychiatrist regarding medication, and psychotherapy or counseling. *Id.* [redacted] indicates that the applicant's husband's English language proficiency will be an impediment to treatment unless a therapist can be found who practices in his native language. *Id.* [redacted] indicates that he informed the applicant that he is not currently conducting psychological testing, and that they would need to seek another clinician to perform a psychometric based assessment. *Id.*

The applicant submits a report from [redacted] a licensed psychologist, in which [redacted] states that the applicant's husband exhibited signs of moderate to severe depression, and he meets the criteria for a Major Depressive Episode, moderate as a result of a severe psychosocial stressor – the potential loss of his wife and daughter. *Report from* [redacted] dated June 17, 2004. [redacted] expresses that

the applicant's husband's depression is severe enough to require psychological counseling and referral for antidepressant medication. *Id.*

Counsel contends that the applicant's husband and daughter are U.S. citizens and thus they are qualifying relatives. *Brief in Support of Appeal* at 6, dated June 24, 2004. Counsel asserts that the applicant's husband and daughter will experience extreme hardship if the applicant is prohibited from remaining in the United States. *Id.*

Counsel states that the applicant's daughter was born premature, and she requires constant parental attention and medical care. *Id.* at 2-3. Counsel indicated that the applicant's daughter receives health insurance through the applicant's husband, and that the family would lose this benefit should they relocate to the Philippines. *Id.* at 11.

Counsel provides that the applicant's husband has no immediate relatives in the Philippines, and that his parents and four siblings are all residing in the United States. *Id.* at 7-8. Counsel explains that the applicant's husband is fully integrated into life in the United States. *Id.* at 14-15.

Counsel explains that conditions in the Philippines are poor, including a high rate of crime, hazardous sanitation systems, substandard medical care, and a weak economy. *Id.* at 8-10. Counsel indicates that the applicant's husband will experience significant economic hardship if he relocates to the Philippines, as he would be compelled to leave his job in the United States and enter a stagnant economy. *Id.* at 11-12.

Counsel states that the applicant's husband is suffering from severe mental and physical conditions, and that psychologists have expressed that his conditions will worsen if the applicant's waiver application is denied. *Id.* at 12-14. Counsel indicates that adequate medical care for the applicant's husband's conditions is not available in the Philippines. *Id.* at 17.

Counsel notes that the applicant's husband wishes to continue his education, and he attempted to register and attend a local community school. *Id.* at 14. Counsel asserts that the applicant's husband would not be able to pursue his educational goals in the Philippines. *Id.*

Counsel asserts that the applicant has good moral character, and that discretionary factors weigh in her favor. *Id.* at 15-16.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains references to hardships that the applicant's daughter will endure if the applicant departs. However, hardship to the applicant's child is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant's daughter will bear significant consequences if separated from the applicant, only hardship to the applicant's husband may be properly considered in this section 212(i) waiver proceeding.

The applicant's husband provides that he is close with the applicant, and that he will experience significant emotional distress if he is separated from her. The applicant submits reports from two psychologists which state that her husband is currently suffering from depression and related symptoms. However, the reports are of limited use, as they were generated for the purpose of this proceeding, and do not represent treatment for a mental health disorder. While the psychologists each recommended counseling and possible medication, the

applicant has provided no evidence that her husband received or required follow-up care from a mental health professional. The applicant's husband indicated that he is under the regular care for mental health problems, yet the record contains no documentation to support this assertion. 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)). While the reports are helpful in providing an understanding of the background and challenges of the applicant's husband, they do not show that, should the applicant depart the United States, her husband will suffer emotional consequences significantly beyond those ordinarily experienced by the family members of those who are deported.

The record contains references to the applicant's husband's desire to continue his education in the United States, including a copy of a registration document for Hayward Adult School. However, counsel provided that the applicant's husband's attendance at a local community school is prospective, and thus the applicant's husband is not currently taking classes. While the AAO acknowledges the applicant's husband's wish to study in the United States, should he relocate to the Philippines he would not interrupt a current course of study. The applicant has not shown that her husband would be unable to study in the Philippines.

It is further noted that the record does not reflect that the applicant's husband would endure significant economic hardship should the applicant depart the United States. The applicant has not submitted evidence that she works, or to show any income she current earns. Conversely, the applicant's husband earned $27,808.46 in 2002, annual compensation that is significantly above the 2006 poverty line for a family of two (taking into consideration the applicant's husband and the applicant's daughter,) evaluated as $13,200. *See Form I-864P, Poverty Guidelines*. The record further lacks an account of the regular expenses for the applicant's household. Thus, the applicant has not shown that her husband would be unable to meet his economic needs in the applicant's absence.

The applicant's husband indicates that he would endure hardship if he relocates to the Philippines. While he states that his parents and siblings are in the United States, the applicant has not submitted evidence to support this contention. The applicant's husband and daughter may relocate to the Philippines with the applicant if they choose in order to maintain family unity. As a native of the Philippines, the applicant's husband would not be forced to adjust to an unfamiliar culture. It is noted that [redacted] stated that the applicant's husband's English language proficiency will be an impediment to treatment unless a therapist can be found who practices in his native language, ostensibly tagalong. Thus, the record suggests that the applicant's husband is comfortable communicating in his native language, and thus he would not be compelled to adapt to a new language in the Philippines.

The AAO recognizes that the applicant's husband would suffer economic consequences if returning to the Philippines, as he would have to leave his current position and adapt to new employment. However, the applicant has not shown that her husband would be unable to meet his financial needs in the Philippines. While the applicant's husband expressed that he would be unable to obtain adequate medical care in the Philippines, the record lacks evidence to show he is currently receiving medical care in the United States. It is noted that the reports from psychologists in the record discuss hardships to the applicant's husband due to possible separation from the applicant. Should he return to the Philippines with the applicant, he would not face such separation or the related emotional hardship.

The applicant submits documentation of current conditions in the Philippines, and counsel asserts that the applicant's husband would face risks there such as a high rate of crime, hazardous sanitation systems, substandard medical care, and a weak economy. Yet, the applicant has not shown the degree that her husband would be affected by such circumstances. For example, the applicant has not indicated where she and her family would reside in the Philippines, such that the AAO can assess local conditions and risks in the area.

Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, or when a child would experience significant hardship abroad, it is reasonable to expect that the child's hardship will create emotional hardship for the qualifying relative.

The applicant provides that her daughter was born premature, and that she requires ongoing medical care related to her birth. However, the applicant has not submitted any documentation relating to her daughter's health or condition at birth, her daughter's current health status, or her daughter's need for continued medical treatment. While counsel reiterates that the applicant's daughter requires ongoing health care related to her premature birth, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The 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). The applicant provides that her daughter receives medical insurance through her husband, yet the record contains no evidence of such insurance. Again, 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. at 165. Thus, the applicant has not established that her daughter requires medical care that is not available in the Philippines. The applicant has not stated other circumstances relating to her daughter that would cause substantial hardship to the applicant's husband.

All instances of hardship to the applicant's husband have been considered separately and in aggregate. Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States do not rise to the level of extreme hardship. 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)(6)(C) of the Act, the burden of proving eligibility remains entirely 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.