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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: JUN 05 2007

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to gain entry into the United States. The applicant is the wife of [redacted] a naturalized citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director concluded that the applicant failed to establish extreme hardship to her qualifying relative, her husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated August 5, 2004.

It is noted that on the Form I-290B, received by Citizenship and Immigration Services on September 3, 2004, counsel indicated that a separate brief and/or evidence would be submitted to the AAO within 30 days. On May 18, 2007, the AAO sent a facsimile to counsel requesting the brief and/or evidence. As no response has been received to date, the record as constituted is complete.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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 chapter is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized
> For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 testified under oath that she had committed fraud by entering the United States on or about August 17, 1997 under an assumed name using a passport and visitor visa purchased in the Philippines. *Decision of the District Director, dated August 5, 2004.* The district director was correct in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The AAO will now address the finding that the granting of a waiver of inadmissibility is not warranted here.

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 to the applicant and her son is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative here is 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).

"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, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that are 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 564. 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).

In the brief, dated June 28, 2004, in support of the Form I-601, counsel states the following. If the waiver application of [redacted] is denied, her husband would endure extreme hardship if he joined her in the Philippines. Almost all of [redacted] immediate family ties are in the United States. The submitted documents reveal the unfavorable economic, social, and political conditions in the Philippines. [redacted] who is not considered a professional because of his educational qualifications, would not be able to find employment in the Philippines. The minimum wage in the Philippines is about 190 Philippine pesos a day or about five dollars a day. The [redacted] would not be able to survive there with a combined monthly salary of $300. Job openings in the Philippines are scarce and [redacted] might end up jobless and with no social

security benefits. *I.N.S. v. Wang*, 450 U.S. 139 (1981); *Mejia-Carillo v. I.N.S.,* 656 F.2d 520, 522 (9th Cir. 1981); *Santana-Figueroa v. I.N.S.*, 644 F.2d 1354, 1357-8 (9th Cir. 1981); *Bueno Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982); and *Matter of Anderson*, 16 I&N Dec. 596, 597 (BIA 1978) indicate that although economic hardship generally is not sufficient to establish extreme hardship by itself, when combined with other relevant factors, in the aggregate they amount to extreme hardship. *Franci-Camarce v. I.N.S.*, 141 F.3d 1175 (9th Cir. 1998), indicates that although economic detriment alone does not establish extreme hardship, it is a factor to consider in determining eligibility for suspension of deportation. In *Franci-Camarce*, the court found the BIA abused its discretion because it failed to consider the primary hardship that [redacted] and her children would suffer if she is unable to support and care for them. [redacted] would lose the health benefits that he and his child (born on March 30, 1999) currently receive if he joins his wife in the Philippines and he would not be able to afford medical care. Medical facilities in the Philippines are inferior to those in the United States. [redacted] has hypertension and gout and his child has asthma; they would have a lower standard of health care in the Philippines. [redacted] would suffer hardship if he remains in the United States without his wife. He would have to shoulder telephone bills and airplane fare just to be with her. [redacted] earns about $1,000 each month as a bell boy with the Hotel Savoy and his wife earns $1,000 each month. He is not able to work on a full-time basis because of his health condition. Cases such as *Bastidas v. I.N.S.,* 609 F.2d 101 (3rd Cir. 1979); *Cirillo-Perez v. I.N.S.*, 809 F.2d 1429, 1425 (9th Cir. 1987); *Mejia-Cerillo, supra*; *Salcido-Salcido v. INS,* 138 F.3d 1292 (9th Cir. 1998); and *Frani-Camarce* indicate the importance of family in the hardship determination. The submitted clinical psychological evaluation of Mr. [redacted] describes his mental state. *Saldana vs. I.N.S.,* 762 F.2d 824 (9th Cir. 1985), conveys that all relevant factors, including a psychiatric report, must be properly considered in determining hardship. Case law indicates that hardship factors need to be considered in the aggregate.

The record contains the affidavit of [redacted] which counsel summarized on appeal. The AAO notes that [redacted] affidavit also indicates the following. He takes medication for high blood pressure and gout and has been advised by his physician to diet. He relies on his wife for his health care: she ensures that he takes his medication and prepares his meals in accordance with his diet. He has had severe depression at the thought of losing his wife who is the only woman he has been involved with. He is seeking psychiatric medical treatment. Due to his health condition, he is unable to work full-time at Hotel Savoy. The [redacted] family spends about $1,500 each month for expenses, including private school for his son ($170 a month). He worries about separating his eight-year-old son from his wife who his son is dependent on emotionally and physically. His parents are 67 years old. He has five brothers and one sister who are either U.S. citizens or legal permanent residents. He has lived in the United States for 20 years and is not familiar with life in the Philippines. Extremists in the Philippines target Americans. He does not want to deprive his son of living in the United States and a premier education and health care. *Affidavit of* [redacted] *dated June 28, 2004.*

The record contains photographs; information about the Philippines; a birth certificate; tax and wage records; records pertaining to household expenses of the [redacted] family; a letter from [redacted], of Downtown Medical; a psychological evaluation; and other documentation. In rendering this decision, the AAO has considered the entire record of proceeding.

The AAO agrees with counsel in that 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, supra* at 1293; *Cerrillo-Perez, supra at* 1424 (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, the fact that the applicant has a U.S. citizen child is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's 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). The Ninth Circuit in *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 AAO will now apply the *Cervantes-Gonzalez* factors here in determining extreme hardship to the applicant's husband. Extreme hardship to the applicant's husband must be established in the event that he remains in the United States; and in the alternative, that he accompanies the applicant. 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 does not establish that the applicant's husband will endure extreme hardship if he remains in the United States without his wife.

The evidence in the record establishes that the Liwanag family presently relies on the income of the applicant and her husband to meet monthly household expenses. However, the U.S. Supreme Court 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.

The record contains a letter from [redacted], dated May 5, 2004, which states that [redacted] is a patient who has "several ongoing medical conditions that require medication and supervision." The doctor indicates that [redacted] is being treated for high blood pressure and gout and takes medication for these conditions. The doctor states that [redacted] requires the assistance of his wife to monitor and supervise meals and ensure that he takes multiple medications.

The AAO finds that the record is insufficient to establish that [redacted]'s high blood pressure and gout constitute a serious health condition. Labels for the medication [redacted] takes are in the record. They

indicate that he must take one tablet orally each day of atenoloi and allopurinol; one-half of a tablet of hydrochlorothiazide; and two sprays nasally two times a day of beconase. Although [redacted] states that [redacted] is required to monitor and supervise her husband's meals and ensure that he takes prescribed medication, no evidence in the record reflects that [redacted] is not able to prepare meals that follow dietary restrictions and take determine when to take medication. Furthermore, there is no evidence in the record establishing that Mr. Liwanag is unable to work on a full-time basis for health reasons. 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)).

The psychological evaluation of [redacted] by [redacted] licensed psychologist, indicates that [redacted] is experiencing an adjustment disorder which is a serious mental disorder and the fear that his wife may not remain in the United States is a significant cause of the disorder. [redacted] recommends that [redacted] seek psychiatric medication evaluation to determine if his condition and sleep disorder can be treated with psychiatric medications.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the adjustment disorder suffered by the applicant's spouse. 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 applicant's husband will undoubtedly experience emotional hardship if separated from his wife. The AAO is mindful of and sympathetic to the emotional hardship that results from separation from a loved one, and it notes that [redacted] is concerned about the emotional impact of the separation of his son from the applicant. However, the AAO finds that [redacted] situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra.*

The record does not indicate that [redacted] will endure extreme hardship if he joins the applicant in the Philippines.

The conditions of the country in which the alien and his or her family will be returning are relevant in determining hardship. However, economic hardship claims of not finding employment in the Philippines and not having proper medical care benefits do not reach the level of extreme hardship. General 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). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit stated that difficulty in obtaining employment and a lower standard of living in the

Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra.* In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that the petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute "extreme hardship and that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship." As previously stated, the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang, supra.*

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [redacted]'s claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

[redacted]'s claim of economic hardship stemming from inability to find work in the Philippines is not supported by evidentiary material. The submitted U.S. Department of State report provides general information about the social, economic, and political conditions in the Philippines, but it is not specific to [redacted] particular circumstances. Similarly, the wage order, the information from IBON Foundation, Inc., and the news articles about the Philippines provide general information about the country, but they do not relate specifically to [redacted] situation. 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, supra.*

[redacted]'s hardship claims regarding health care are not persuasive in establishing extreme hardship. Loss of group medical insurance and "second class" medical facilities in foreign countries are not considered "extreme hardship." *See Carnalla-Munoz, supra, and Matter of Correa, supra.*

The fact that economic and educational opportunities for the [redacted] child are better in the United States than in the alien's homeland does not establish extreme hardship. *See, e.g., Matter of Piltch*, 21 I&N Dec. 627, 632 (BIA 1996), citing *Matter of Kim*, 15 I&N Dec. 88 (BIA 1974) and *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986) (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship). Thus, the claim of reduced educational opportunities for [redacted]'s child is unpersuasive in establishing extreme hardship.

[redacted]'s need to acculturate to life in the Philippines and his separation from his parents and siblings do not establish extreme hardship. *Matter of Piltch, supra* at 631, states that separation from a family member or cultural readjustment do not constitute extreme hardship.

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 deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation 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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.