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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: SEP 20 2007

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:

SELF-REPRESENTED

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 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 having procured entry into the United States by fraud or willful misrepresentation; the record indicates that at her I-485 interview on July 2, 2002, the applicant provided sworn testimony that she entered the United States on or about September 1995 using a passport and visa containing an assumed name. The applicant is married to a naturalized U.S. citizen 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 her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated August 31, 2005.

In support of the waiver request, counsel[1] submits a brief, dated September 27, 2005; a copy of the applicant's marriage certificate; a copy of the applicant's daughter's U.S. birth certificate; a declaration from the applicant's spouse, a naturalized U.S. citizen, dated April 22, 2005; a declaration from the applicant, dated April 22, 2005; copies of the applicant's earning statements; a copy of the Central Intelligence Agency's Factbook on the Philippines; a copy of the U.S. Department of State's Profile of the Philippines; and copies of medical charts confirming the applicant's spouse's hypertension and selected Internet print-outs regarding said medical condition. 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)

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[1] The applicant appears to be represented; however the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

> 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.

To begin, the record contains several references to the hardship that the applicant's child would suffer if the applicant's waiver of inadmissibility is not granted. As stated by the applicant, "...my daughter is only 27 months old. I am actively involved in raising my daughter. If I am separated from her, she will suffer drastic psychological and mental pain. My daughter needs her mother to be here with her to guide her and to love her..." *Declaration from* [redacted] dated April 22, 2005. Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(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 herself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or their child cannot be considered, except as it may affect the applicant's spouse. While the AAO recognizes that the applicant's spouse may need to make alternate arrangements with respect to his daughter's care, it has not been determined that such arrangements would cause the applicant's spouse extreme hardship. Moreover, it has not been established that the applicant would be unable to relocate abroad with her young daughter if the applicant were removed.

Counsel further asserts that the applicant's spouse would experience emotional hardship were the applicant removed from the United States. As stated by counsel, "...separation from his wife and partner of almost eight years will obviously cause [redacted] [the applicant's spouse] emotional trauma, as he has grown accustomed to [redacted] [the applicant] for emotional support.. [redacted] would experience feelings of

inadequacy, insecurity, and anxiety, as a parent to their daughter if he is separated from his wife...Moreover, the quality of the marriage would suffer...The cost and time of international travel would make it infeasible for [redacted] to visit [redacted] with any regularity necessarily [sic] to sustain a meaningful relationship...long distance telephone calls and correspondence cannot substitute for [redacted] physical presence in [redacted] life..." *Brief in Support of Appeal,* dated September 27, 2005. The applicant's spouse supports counsel's assertions in his own declaration. As the applicant's spouse states, "...If my wife and I are geographically separated, I would feel very lonely, hopeless, depressed, and anxious..." *Declaration from* [redacted] dated April 22, 2005.

There is no documentation establishing that the applicant's spouse's emotional or psychological hardship is any different from other families separated as a result of immigration violations. Moreover, no objective evidence is provided to corroborate the applicant's spouse's statements regarding his mental state, such as statements from a professional in the medical field documenting that the applicant's spouse is suffering from a medical condition due to the applicant's immigration situation. Finally, despite counsel's assertions, it has not been established that it would be an extreme hardship for the applicant's spouse to visit the applicant, whether in the Philippines or in any other country to which the applicant relocates, on a regular basis. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his 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. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS, supra,* held further 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, counsel states that the applicant's spouse will suffer financial hardship if the applicant were removed from the United States. As stated by counsel, the applicant "...is responsible for more than 50% of the mortgage payments of their new home... [redacted] [the applicant's] forced permanent relocation to the Philippines will cause [redacted] [the applicant's spouse] significant financial difficulty as he will have to become the sole breadwinner for himself and his daughter...Once [redacted] permanently relocates to the Philippines, she will unlikely be able to obtain a job that will enable her to offer [redacted] any financial assistance..." *Brief in Support*, at 4. No documentation has been provided to substantiate the assertions that the applicant would be unable to assume the financial responsibilities of the household based on his own income. Although the applicant's spouse may need to make alternate arrangements with respect to his

employment and housing situation, it has not been established that such arrangements would cause him extreme hardship. Moreover, counsel provides no evidence to establish that the applicant's spouse, a registered nurse, would not be able to assume a similar position, relatively comparable in pay and responsibilities were she to relocate to the Philippines, or any other country of her choosing, thereby assisting the applicant's spouse with the household expenses. Although counsel provides articles regarding country conditions in the Philippines, the articles are general in nature and do not specifically correlate to the applicant's profession and personal situation were she to return to the Philippines. 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)).

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).

Counsel further contends that the applicant's spouse suffers from hypertension, or high blood pressure. As counsel states, "...the emotional distress, coupled with financial uncertainty surrounding the loss of his wife's income, may cause [redacted]'s [the applicant's spouse's] hypertension to worsen, as he neglects to take his required medication or properly adjust his lifestyle to keep it under control...The stress and anxiety surrounding these changes can potentially aggravate [redacted]'s hypertension, causing long term health problems..." *Brief in Support,* at 5. No objective evidence is provided that details the severity of the applicant's spouse's medical situation, and the treatment the applicant's spouse is undergoing due to his medical condition. Articles from the Internet about hypertension do not suffice as they do not specifically relate to the applicant's spouse's medical situation; the articles explain the disease in general terms. A copy of a medical chart has been submitted with the appeal, but no analysis of the notations made by the physician is provided to further document the applicant's spouse's medical situation and the potential for worsening. Finally, according to the applicant's spouse's Form G-325, Biographic Information, the applicant's spouse has been employed since January 1995 as a cook; his medical condition clearly does not hinder his ability to work and support his family.

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. In

this case, the applicant has not asserted any reasons why the applicant's spouse is unable to relocate to the Philippines, his birth country.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. 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.