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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: AUG 26 2009

IN RE: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant has a lawful permanent resident mother and is married to a lawful permanent resident. He 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 his mother, and his spouse and their two U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated September 12, 2006.

On appeal, counsel for the applicant contends that the applicant has established that his qualifying relatives would suffer extreme hardship and that United States Citizenship and Immigration Services (USCIS) abused its discretion in failing to consider and give proper weight to the evidence presented. *Form I-290B, Notice of Appeal to the Administrative Appeals Office; Attorney's brief.*

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, earnings statements and W-2 Forms for the applicant and his spouse; a statement from the applicant's spouse; a medical letter and records for the applicant's spouse; employment letters for the applicant and his spouse; nursing credentials for the applicant's spouse; a mortgage statement; a homeowner's insurance statement; a car payment statement; police clearance letters for the applicant and his spouse; a U.S. Department of State Travel Warning for the Philippines; and a U.S. Department of State country conditions report for the Philippines. The entire record was reviewed and considered in rendering this decision.

Counsel states that the precedent decisions cited by the District Director are not comparable to the present case. *Attorney's brief.* While the AAO acknowledges this statement, it notes that the decisions cited by the District Director are not cited because they are similar to this case, but because they offer an understanding of the meaning of extreme hardship as it has been defined by the Board of Immigration Appeals.

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 during an adjustment of status interview on November 8, 2005, the applicant admitted that the A-2 visa he used to gain admission to the United States on April 26, 2000 was purchased from a friend and that he had no intention of working as a driver for the Japanese ambassador in Washington, DC. *Memorandum, California Service Center*, dated November 17, 2005; *Fraudulent Form I-94, Departure Card.* Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant or his child would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse and the applicant's mother if the applicant is removed. If 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 Board 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 family ties to 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.

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 and will accord the separation of family appropriate weight in this proceeding.

The AAO notes that extreme hardship to the applicant's spouse or the applicant's mother must be established whether his spouse or mother reside in the Philippines or the United States, as neither is required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's mother joins the applicant in the Philippines, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother was born in the Philippines. *Form G-325A, Biographic Information, for the applicant.* The record does not address how the applicant's mother would be affected if she resides in the Philippines. The AAO observes that the record indicates that the applicant's mother resides in the Philippines. *Form G-325A, Biographic Information, for the applicant.* As the record does not address this aspect of the hardship claim, the AAO is unable to find that the applicant's mother would experience extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his mother if she were to reside in the Philippines.

If the applicant's spouse joins the applicant in the Philippines, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the Philippines. *Birth certificate.* The record does not address whether the applicant's spouse has any family in the Philippines. The applicant's spouse asserts that she would not know how to begin a life in the Philippines. *Statement from the applicant's spouse*, dated February 19, 2006. She notes that the Philippines is a very dangerous place for Americans to visit. *Id.* The AAO observes the record includes a Travel Warning issued by the U.S. Department of State that is current as of February 19, 2006 recommending that Americans consider carefully the risks of travel to the Philippines. *Travel Warning, Philippines, United States Department of State*, dated February 19, 2006. While the AAO acknowledges this Travel Warning issued by the United States government in 2006, it notes that as of 2009, the U.S. Department of State limited its Travel Warning in the Philippines to the southern Philippine islands of Mindanao and the Sulu Archipelago. *Travel Warning, Philippines, United States Department of State*, dated January 27, 2009. The record makes no mention of the applicant's spouse residing in Mindanao or Sulu Archipelago and thus, the AAO finds the evidentiary value of the 2006 travel warning included in the record to be diminished. The applicant's spouse notes that she and the applicant cannot make a living in the Philippines and would have difficulty finding a job due to the high unemployment rate. *Statement from the applicant's spouse*, dated February 19, 2006. The applicant's spouse also notes that she could not afford medical care in the Philippines. *Id.* While the AAO acknowledges these assertions, it notes that the record does not include published country conditions reports documenting employment opportunities or the cost of healthcare in the Philippines. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the Philippines.

If the applicant's mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. As previously noted, the applicant's mother was born in the Philippines. *Form G-325A, Biographic Information sheets, for the applicant.* The applicant's spouse notes that the applicant's mother was widowed and never remarried. *Statement from the applicant's spouse*, dated February 19, 2006. She notes that the applicant's mother is extremely close to the applicant, and that the applicant and his sister have been a tremendous source of emotional and financial support for their mother. *Id.* The applicant's spouse asserts that the applicant's mother is extremely worried about herself and being separated from the applicant, as well as what would become of their family should the applicant return to the Philippines. *Id.* While the AAO acknowledges the assertions of the applicant's spouse, it notes that the record does not contain any statements from the applicant's mother addressing her own feelings, nor does the record contain any documentation showing that the applicant contributes to his mother's financial well-being. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 record also does not establish that the applicant's sister could not support their mother in the applicant's absence or that he could not obtain employment in the Philippines and continue to financially assist his mother from outside the United States. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his mother if she were to remain in the United States.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the Philippines. *Birth certificate.* The record does not address the amount of time the applicant's spouse has resided in the United States, nor does the record address whether she has any family members in the United States. The applicant's spouse asserts that without the applicant, she would be unable to maintain her home, support the children or provide them with the kind of opportunities that she and the applicant have worked so hard to be able to provide. *Statement from the applicant's spouse*, dated February 19, 2006. The AAO notes the record includes earnings statements and W-2 Forms for the applicant's spouse showing her to have earned $19,910.22, $2,175.00 and $66,088.91 in 2005 and $27,608.50 in 2003. *Earnings statements and W-2 Forms.* The record also documents various expenses for the applicant and his spouse, such as a mortgage, car payment, and homeowner's insurance. *Mortgage statement; car payment; and homeowner's insurance statement.* While the AAO acknowledges these expenses, it notes that the record does not contain sufficient documentation to demonstrate the applicant's spouse's financial status. Neither does it establish that the applicant would be unable to contribute to his family's financial well-being from a place other than the United States. The record includes a published country conditions report documenting the human rights situation in the Philippines. However, this report makes no mention of the economic situation or employment opportunities available in the Philippines.

The applicant's spouse states that she cannot bear the thought of being separated from the applicant. *Statement from the applicant's spouse*, dated February 19, 2006. The AAO acknowledges the emotional bonds between the applicant and his spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.