**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

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**U.S. Citizenship and Immigration Services**

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA (SANTA ANA) 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 is married to a lawful permanent resident 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 his spouse and their lawful permanent resident 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 January 24, 2007.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office.*

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, W-2 Forms and earnings statements for the applicant and his spouse; tax records for the applicant and his spouse; a secured property tax bill 2002-2003; charitable donation statements; statements from the applicant's spouse; grade transcripts and certificates for the applicant's children; a deed of trust; a car insurance policy and car title; a medical letter for the applicant's spouse; and a notice of revised assessment. 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 on October 7, 1991 the applicant procured admission into the United States by presenting false documents at the airport in St. Paul/Minneapolis, Minnesota. *Record of Sworn Statement*, dated February 28, 2006; *Fraudulent Form I-94, Departure Card; Fraudulent Seaman's Continuous Discharge Book.* 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 children 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 if the applicant is removed. Hardship to the applicant or other family members will be considered only to the extent that it affects the applicant's spouse. 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in the Philippines or the United States, as she is not 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 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.* Her father is deceased and most of her family lives in the United States. *Statement from the applicant's spouse*, dated December 20, 2006. Her mother is a lawful permanent resident and her sisters are naturalized United States citizens. *Id.; Lawful permanent resident card; Naturalization certificates.* The applicant's spouse states that she would not take her children to the Philippines, as their lives are in the United States. *Statement from the applicant's spouse*, dated December 20, 2006. She notes that her children have a basic understanding of Tagalog, but that neither of them have returned to the Philippines since coming to the United States in 1991. *Id.* While the AAO acknowledges these statements, it notes that the applicant's children are not

qualifying relatives for the purposes of this case and the record fails to document how any hardship the children might face upon relocation would affect the applicant's spouse, the only qualifying relative. The applicant's spouse has been treated for hypertension, irritable bowel syndrome, and seasonal allergies. *Statement from* [redacted], dated March 6, 2006. She takes prescribed medications daily and visits her physician every three to four months. *Id.* Her medical condition is stable and her blood pressure is well controlled with medication. *Id.* While the AAO acknowledges the medical conditions of the applicant's spouse, it notes that the record does not establish that she would be unable to receive adequate care in the Philippines. The record does not include published country conditions reports documenting the availability of medical treatments in the Philippines, nor does the record include a statement from the applicant's spouse's physician indicating the severity of her health conditions and how she would be affected if she were unable to receive appropriate care. The AAO also notes counsel's statement that the applicant's spouse and children would risk losing their lawful permanent resident status if they moved permanently to the Philippines. *Attorney's brief.* When looking at the aforementioned factors, particularly the lack of close family ties in the Philippines and the potential loss of the applicant's spouse's lawful permanent resident status, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the Philippines. *Birth certificate.* Her father is deceased and most of her family lives in the United States. *Statement from the applicant's spouse*, dated December 20, 2006. Her mother is a lawful permanent resident and her sisters are naturalized United States citizens. *Id.; Lawful permanent resident card; Naturalization certificates.* The applicant's spouse has been treated for hypertension, irritable bowel syndrome, and seasonal allergies. *Statement from* [redacted], dated March 6, 2006. She takes prescribed medications daily and visits her physician every three to four months. *Id.* Her medical condition is stable and her blood pressure is well controlled with medication. *Id.* The applicant's spouse asserts that, without the applicant, her stress will increase considerably, causing her conditions to worsen. *Statement from the applicant's spouse*, dated December 20, 2006. While the AAO acknowledges the assertions of the applicant's spouse, it notes that her physician does not address the affect of stress upon her medical conditions in his statement. *See statement from* [redacted] dated March 6, 2006. 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 applicant's spouse states that being separated from the applicant would cause her to be financially ruined. *Statement from the applicant's spouse*, dated December 20, 2006. She notes that she would be the sole financial support for herself, her two children and the applicant, as she is certain that the applicant would be unable to find any work at a decent wage in the Philippines. *Id.* While the AAO acknowledges that the applicant and his family have expenses such as car insurance and property taxes (*see car insurance policy; secured property tax bill 2002-2003; and notice of revised assessment*, dated February 19, 2004), it finds that the record fails to include sufficient documentation to establish the applicant's spouse's financial situation in the absence of the applicant. The record does not include documentation regarding expenses such as mortgage payments or utility bills, nor is there any information regarding college expenses. Furthermore, the

record does not document that the applicant would be unable obtain employment and contribute to his family's financial well-being from a location other than the United States. The AAO notes that the record fails to include documentation, such as published country conditions reports, that shows the economic situation and unemployment data for the Philippines. As previously mentioned, 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 AAO acknowledges the difficulties that would be faced by the applicant's spouse if he were to be removed from the United States. 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.