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

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[redacted]

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FILE: [redacted] Office: NEWARK, NJ Date: JAN - 2 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, Newark, New Jersey, 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 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 procuring admission into the United States by fraud or willful misrepresentation. The applicant has a U.S. citizen spouse and son, and a lawful permanent resident daughter. 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 family.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 17, 2006.

On appeal, counsel asserts that the district director's decision was incorrect as a matter of law and fact. *Form I-290B*, received March 17, 2006.

The record includes, but is not limited to, counsel's brief; statements from the applicant's spouse, daughter and son; a statement regarding the applicant's son's medical records; and the deed to the applicant's house. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 18, 1994, the applicant was admitted to the United States with a passport issued in the name of another individual. As a result of this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act.

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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship experienced by the applicant or his children is relevant only to the extent it causes hardship to the applicant's spouse. 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 (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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's spouse must be established whether she relocates to the Philippines or remains in 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to the Philippines. The applicant's spouse's U.S. citizen son and lawful permanent resident daughter reside in the United States. *Brief in Support of Appeal*, at 2, dated October 20, 2005. The applicant's daughter states that she and her brother are in college and her parents financially support their schooling. *Applicant's Daughter's Statement*, dated April 14, 2006. The record does not include substantiating evidence that the applicant's children are in college or that they would encounter financial hardship without their parents. Going on record without supporting documentation will not meet the applicant's burden of proof in 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 reflects that the applicant's son has a history of suicidal ideation. *Applicant's Son's Medical Records*, at 2, dated August 19, 2004. The applicant's spouse states that her son needs her and the applicant's support to cope with his problems and she needs her family together in times of crisis. *Applicant's Spouse's Statement.* The record does not indicate where the applicant's son will reside if the applicant's spouse resides in the Philippines. If he remains in the United States, the record does not address or provide evidence of the effect that a separation from her son would have on the applicant's spouse, the only qualifying relative in the proceeding. If the applicant's son moves to the Philippines, the record does not include evidence of the availability of mental health care in the Philippines, the costs of health care in the Philippines, or evidence that the applicant and his spouse could not afford such healthcare if available. The applicant's spouse also states that she has been diagnosed as a Type I diabetic with thyroid disorder. *Id.* The record does not include

supporting documentary evidence of the applicant's spouse's medical problems. *See Matter of Soffici, supra.*

Based on the record, the AAO finds that insufficient evidence has been provided to establish extreme hardship to the applicant's spouse in the event that she relocates to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant and his spouse jointly own their home. *Brief in Support of Appeal*, at 1. The record reflects that the applicant and his spouse purchased their home for $450,000. *Deed*, dated September 12, 2004. The applicant's spouse states that her monthly source of income is not enough to cover all of her monthly household expenses and the applicant is the only one she can count on in times of illness and suffering. *Applicant's Spouse's Initial Statement*, dated October 15, 2005.

The applicant's spouse states that her children are attending college and she cannot afford their college by herself. *Applicant's Spouse's Statement.* However, the record does not include documentary evidence that the children are attending college or the costs related to their education. The applicant's spouse states that she has been diagnosed as a Type I diabetic with thyroid disorder and this is detrimental to her ability to financially support her children. *Id.* As previously noted, the record does not include supporting documentary evidence of the applicant's spouse's medical problems. The applicant's spouse states:

> Furthermore, my son suffered a major emotional breakdown in 2004. He was confined at St. Clare's Behavioral Health Center for self destructive behavior after he tried to commit suicide...We are still healing from this dilemma. My son needs mine and my husband's support to cope with his problems. I need my family together in times of crisis and...separating my husband from us will not be...beneficial in improving our family. My children need emotional support from us and by forcing to break this foundation; this will cause a lifetime of suffering, pain, and hardship.

Applicant's Spouse's Statement.

The record reflects that the applicant's son was admitted to St. Clare's hospital because of suicidal ideation. *Applicant's Son's Medical Records*, at 2. Based on the documentation provided concerning the mental health problems of the applicant's son, the AAO finds that the applicant's spouse would experience extreme hardship if she were required to deal with these problems in the absence of the applicant.

U.S. court decisions have additionally 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, the U.S. Supreme Court additionally 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he 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. *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.