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

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[redacted]

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FILE: [redacted] Office: SAN FRANCISCO Date: MAY 13 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 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.

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, 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, San Francisco, 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 sought to procure a nonimmigrant visa through fraud or misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated November 27, 2002.

On appeal, counsel asserts that Citizenship and Immigration Services ("USCIS") erred by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Specifically, counsel claims that USCIS held the applicant to a higher standard than that required by law and further states that the cumulative effects of the adverse consequences the removal of the applicant would have on his wife amounted to extreme hardship. *See Brief in Support of Appeal* at 7. Counsel maintains USCIS placed too much emphasis on the fact that the applicant's wife was aware of his illegal status and potential inadmissibility for fraud when she married him, and further states that USCIS did not take documentary evidence of physical, emotional, and economic hardship into account when it denied the waiver application. *Brief* at 3-5. In support of the waiver application and appeal, counsel submitted statements from the applicant and his wife, a letter from the applicant's wife's physician, medical records for the applicant's wife, a psychological evaluation of the applicant's wife, payroll documents for the applicant and his wife, and financial documentation including bank and credit card statements. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra,* the court further held 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.

The record reflects that the applicant is a fifty year-old native and citizen of the Philippines who applied for a nonimmigrant visa in Manila, Philippines in May 1996 and provided a false income tax return as evidence of his income in the Philippines. He also failed to state on his nonimmigrant visa application that his wife was a Lawful Permanent Resident residing in California at the time.[1] The record further reflects that the applicant married his wife, a forty-nine year-old native of the Philippines and citizen of the United States, on December 8, 1990 in La Union, Philippines and later

[1] The AAO notes that although the applicant claims to have married his wife only once, after arriving in the United States in 1996, he stated on his immigrant visa application and in a sworn statement dated May 22, 1996 that he married his current wife on December 8, 1990 in La Union, Philippines.

on September 28, 1996 in Reno, Nevada. The applicant resides with his wife in Stockton, California.

Counsel asserts that the applicant's wife suffers from medical conditions that would result in extreme hardship if she were separated from the applicant. Counsel states that she is in poor health and suffers from lower back pain, anemia, and severe allergic rhinitis and also had a tumor in her breast removed. *Brief* at 2. In support of this assertion, counsel submitted a letter from the applicant's wife's physician that states that she suffers from "chronic low back pain, anemia, allergic rhinitis, and fibroadenoma-breast." *Letter from* [redacted] dated September 30, 2002. [redacted] further states that she has been referred to physical therapy for the back pain, been advised to take iron for the anemia, and had a lumpectomy of the right breast. Records concerning the lumpectomy and biopsy undergone by the applicant's wife indicate that the tumor was benign. *See Tri-Valley Surgery Center, Operative Report* dated July 19, 2002.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's wife's condition is so serious that she would suffer extreme hardship if she remained in the United States without the applicant. The record contains a brief letter from a physician indicating that the applicant's wife suffers from back pain, anemia, and allergies and also had a benign tumor removed from her breast in 2002. The evidence does not support the assertion made by counsel that the applicant's wife has had breast cancer. *See Brief in Support of Appeal* at 7. The record contains a brief letter from the applicant's wife's doctor and records concerning her 2002 lumpectomy, but no other evidence concerning her current medical condition, such as a detailed letter in plain language from her physician explaining the nature and long-term prognosis of any medical condition and any treatment and medication needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

Counsel further asserts that the applicant's wife suffers from major depression and an anxiety disorder and depends on the applicant for emotional and psychological support. In support of these assertions counsel submitted a psychological evaluation from [redacted] who interviewed the applicant's wife on September 8, 2002. The evaluation contains an overview of the applicant's wife's upbringing in the Philippines and her life in the United States and marriage to the applicant. It states that she has experienced symptoms including sleep disturbance, decreased appetite, headaches, fatigue, difficulty concentrating, tearfulness, and anxiety since learning that the applicant may not be granted permanent residence. *See Evaluation from* [redacted] dated September 8, 2002 at 2. It further states that she was distraught by the removal of a breast tumor and relies on the applicant for support to help her cope. *See Evaluation from* [redacted] *at 3.* [redacted] also states that the applicant and his wife have been trying to conceive a child, and stress over the applicant's immigration situation has probably decreased her fertility, and further states that the applicant's wife's stress is exacerbated over fears of losing their home if the applicant is removed from the United States. *See Evaluation from* at 3. [redacted] concludes that the applicant's wife is suffering from Major Depression, mild, and Anxiety Disorder

and recommends psychological treatment to cope with her symptoms and stress. *See Evaluation from* [redacted], at 4.

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any past diagnosis or history of treatment for any condition such as depression or anxiety. **Further, although** [redacted] recommended psychological treatment in September 2002, there is no evidence on the record of any ongoing treatment for any psychological condition. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

The evidence does not establish that the difficulties the applicant's wife is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by being separated from her husband is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel additionally asserts that the applicant and his wife are able to meet their financial obligations with both of their incomes, but that the applicant's wife would be unable to meet these obligations on her own if the applicant were removed. *Brief* at 2. In support of this assertion counsel submitted credit card statements and documentation concerning an auto loan with a balance of approximately $24,000. A 2001 joint income tax return submitted with the affidavit of support indicates that they earned about $21,000 but does not have W-2 forms attached to show how much of this was earned by the applicant. All of the income reported on their 2000 joint income tax return was earned by the applicant's wife. Although it appears likely that the financial situation of the applicant's wife would be negatively affected by the loss of the applicant's income, there is no evidence of any unusual circumstances that would prevent her from supporting herself. The loss of his income and potential decline in standard of living is the type of hardship to be expected as a result of deportation or exclusion. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (stating that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (stating that separation of family members and financial difficulties alone do not establish extreme hardship).

Counsel further asserts that if she relocated to the Philippines, the applicant's wife would face economic, physical, and emotional hardship. The applicant states that he and his wife would have difficulty starting life all over in the Philippines without a home or gainful employment. *See letter from* [redacted] **dated October 7, 2002. He further states that due to her health, she would**

have difficulties, including worsening of her dust allergy, if she relocated to the Philippines, and they would not have the money to cover medical expenses. *Id.* The psychological evaluation of the applicant's wife also indicates that she is concerned that medical care there "is not of the same caliber" and her allergies would be exacerbated. *See Evaluation from* [redacted] **at** 3. Counsel did not submit any information on conditions in the Philippines and the availability of medical care in the Philippines to support the assertion that the applicant's wife would suffer physical or economic hardship if she relocated there. 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)). The AAO further notes that although she has resided in the United States since 1995, the applicant's wife is a native of the Philippines and there is no indication that she does not speak Tagalog or other evidence to support an assertion that she would be unable to adjust to life in the Philippines. Although it appears likely the applicant's family would suffer a decline in their standard of living if they relocated to the Philippines, this is the type of hardship to be expected as a result of deportation or exclusion. *See INS v. Jong Ha Wang, supra.*

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission to the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The emotional and financial difficulties that the applicant's wife would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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.