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

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FILE: [redacted] Office: MANILA, PHILIPPINES Date: JAN 13 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Manila, Philippines. The matter 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen son. He seeks a waiver of inadmissibility in order to reside in the United States.

In his decision, dated June 4, 2007, the OIC found that the applicant failed to demonstrate that his qualifying relative would experience extreme hardship as required by statute. The application was denied accordingly.

In a brief, dated July 25, 2007, counsel states that the OIC erred and abused his discretion in denying the applicant's waiver application. He states that the applicant is eligible for a waiver under section 212(a)(9)(B)(v) of the Act and warrants a favorable exercise of discretion.

The record indicates that the applicant entered the United States on July 15, 1994 with an authorized stay of twenty-nine days. The applicant remained in the United States until May 9, 2003. Therefore, the applicant accrued unlawful presence from April 1, 1997, the day the unlawful presence provisions were enacted, until May 9, 2003, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his May 9, 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > > (II) has been unlawfully present in the United States **for one year or more,** and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant or his child experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

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.

The AAO notes that counsel does not submit any new documentation regarding extreme hardship on appeal, but relies on the evidence submitted with the initial waiver application. Thus, the record of hardship includes a statement from the applicant's spouse, medical documentation for the applicant's wife and son, tax returns for the applicant's family, and letters from the applicant's spouse's employer.

In her statement, dated December 14, 2006, the applicant's spouse asserts that she is suffering hardship since the applicant's departure in 2003. The applicant's spouse states that she has to work two jobs to support the family. However, tax documentation submitted indicates that even before the applicant's departure the applicant's spouse was working two jobs, earning approximately $100,000 per year as a nurse. The evidence does not show that the applicant contributed income to the household.

Most of the applicant's spouse's statement concerns the emotional hardship she is suffering as a result of separation. She indicates that she is suffering from raising their son without the applicant and that she is only able to visit the applicant three weeks out of every year. She states that it causes her emotional hardship to have her son always bullied at school and asking for his father. The record indicates through medical documentation that the applicant's spouse suffers from high blood pressure and the applicant's child has asthma. The applicant's spouse states that she has had chest pains and needed to be taken to the hospital. She states that they need the help of the applicant at home and that without him she fears she may fall into a deep depression.

The applicant's spouse also states that she cannot leave the United States because her most important family members are in the United States, including her parents who have moved in with her to support her while the applicant is not in the United States. She also states that if she relocated to the Philippines she does not know what she would do for work. The AAO notes that the applicant's spouse is a registered nurse and submitted no documentation to show that she would not be able to find employment in the Philippines. She states that to be a nurse in the Philippines she would have to take more courses and an exam, which would cause her severe financial hardship. Again, the applicant's spouse has not submitted any documentation to support these claims. Finally, the applicant's spouse states that she does not want to leave all of her friends in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. The applicant's spouse has not submitted documentation to support her claims of extreme hardship due to the applicant's inadmissibility. 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)). 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 record lacks supporting documentation regarding country conditions in the Philippines and the emotional hardship the applicant's spouse is suffering. Moreover, the financial documentation submitted does not support her claims of financial hardship due to the applicant's absence. 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)(9)(B) 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.