U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H3

FILE: [redacted] Office: MANILA, PHILIPPINES Date: JAN 24 2005

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.

FOR Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, 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 determined 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. The applicant married a citizen of the United States on October 21, 2000 and is the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and child.

The acting immigration attaché 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 Excludability (Form I-601) accordingly. *Decision of the Acting Immigration Attaché,* dated December 5, 2003.

On appeal, counsel states that Citizenship and Immigration Services erred in finding that the applicant failed to demonstrate extreme hardship. *Form I-290B*, dated December 15, 2003.

In support of this assertion, counsel submits a brief, dated January 26, 2004; a notarized statement of the former fiancé of the applicant; a note from a physician concerning the medical condition of the applicant's child; a letter from a physician treating the applicant's spouse; a prescription slip for the applicant's spouse; a letter from a licensed clinical social worker; a consular information sheet compiled by the Department of State; a monthly expense report and copies of bills as reported by the applicant's spouse; a sworn statement of the applicant; articles addressing country conditions in the Philippines; a letter from the applicant's spouse, dated July 11, 2004; newspaper articles addressing immigration cases; a medical certificate from a physician treating the applicant in the Philippines; a note from a physician treating the applicant in the Philippines and a letter from the applicant's spouse, dated February 5, 2005.

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

> (B) Aliens Unlawfully Present.-
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> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > . . . .
> >
> > (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.

In the present application, the record indicates that the applicant entered the United States as the beneficiary of a valid fiancée visa on October 13, 1996. The applicant failed to marry the petitioner who filed the fiancée petition on her behalf. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 31, 2003, the date on which she departed from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her departure.

The AAO acknowledges counsel's assertion that the applicant was not at fault for her failure to comply with the terms of her fiancée visa. *See Letter from Norman D. Fredeluces*, dated February 5, 2005 ("I am begging you guys to forgive my wife by overstaying here in U.S. [sic], which is not her fault, if her exfiance called off the wedding, and let [sic] my wife hanging to the air not knowing what to do."). Counsel contends that the applicant's former fiancé decided not to wed the applicant after she arrived in the United States on a valid fiancée visa. *See Notarized Statement of Christopher M. Sanders*, undated. While the situation is regrettable, the AAO notes that the applicant failed to comply with the regulations governing her lawful stay when she did not depart from the United States after learning that her reason for entering the country was no longer valid. Although the applicant was unable to control the decision of her former fiancé, she was not prevented from departing from the country as required.

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 or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by 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 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.

Counsel contends that the applicant's spouse would suffer hardship as a result of relocation to the Philippines in order to remain with the applicant, as he has no relatives there. *Appeal of Denial of I-601 Waiver and Application for Immigrant Visa*, dated January 26, 2004. Counsel asserts that the family members of the applicant's spouse are United States citizens and lawful permanent residents. Counsel states that the family of the applicant's spouse is close and gets together frequently throughout the year. *Id.* at 5. Counsel indicates that if the applicant's spouse relocated to the Philippines he would not earn enough money to provide medical care for his family as wages are significantly lower in the applicant's home country than in the United States. *Id.* at 5-6, 8. Counsel reports that the applicant's child has suffered from pneumonia on two separate occasions since moving to the Philippines and indicates that the applicant's spouse has had to pay for her treatment at considerable cost because his health insurance policy does not cover medical care in the Philippines. *Id.* at 6-7. Counsel further asserts that American citizens are at risk of danger in the Philippines. Counsel contends that terrorist groups target Americans as good sources for extortion and kidnapping. *Id.* at 9-10; *see also U.S. Department of State Consular Information Sheet, Philippines*, dated November 24, 2003.

Counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States in order to maintain proximity to family members, lucrative employment and safety from the dangers presented by life in the Philippines. Counsel contends that the applicant's spouse suffers extreme emotional and psychological hardship as a result of separation from the applicant and their child. *Appeal of Denial of I-601 Waiver and Application for Immigrant Visa* at 8-9. Counsel indicates that the applicant's spouse is under the care of a physician and a clinical social worker and submits documentation from both of these medical professionals to support the assertion. *Id.* at 9. The letter from the physician treating the applicant's spouse states that the applicant's spouse will be started on medication and will be referred to counseling in order to combat anxiety and depression. *Letter from Larry R. Feliciano, MD*, dated December 22, 2003. The letter from the clinical social worker treating the applicant's spouse indicates that the applicant's spouse has been prescribed an antidepressant. *Letter from Michelle D. Irish, LCSW*, dated January 13, 2004. Beyond this statement, the clinical social worker fails to offer a psychological opinion related to the condition of the applicant's spouse nor does her letter evidence an ongoing relationship between the clinical social worker and the applicant's spouse. The submitted letter describes the immigration situation of the applicant and the fact that the applicant and her spouse are "trying to achieve the American dream." *Id.* The clinical social worker concludes by recommending that the applicant's bar from entry to the United States should be reduced from 10 years to three to five years owing to her situation. *Id.* The AAO notes that the record provides no basis upon which the AAO could be persuaded by the legal assertions of a clinical social worker. Further, the submitted letter provides no evidence on which the AAO can find extreme psychological hardship suffered by the applicant's spouse. According to the record, the applicant's spouse suffers from depression and is being treated for it. The record fails to indicate that the treatment received by the applicant's spouse has been unsuccessful in addressing his symptoms.

The AAO acknowledges receipt of documentation submitted by counsel establishing that the applicant has been diagnosed with diabetes and Major Depressive Disorder. *Letter from Lizbeth A. Galdamez, Esq.*, dated February 8, 2005. The record indicates that the applicant is undergoing treatment for depression in the form of psychotherapy and psychopharmacological management and for diabetes in the form of medication and monthly visits to the doctor. *See Letter from Cherryl Velasco Francia, MD, DPBP*, dated January 18, 2005; *see also Letter from Leslie Ann C. Yu-Mallen, MD*, dated July 12, 2004. Counsel contends that this situation

is adding to the difficulty encountered by the applicant's spouse. The record does not establish that the treatments and medication prescribed to the applicant have been unsuccessful in combating her ailments.

The AAO acknowledges the submission of expenses submitted by counsel in support of the assertion that the applicant's spouse suffers financial hardship in the absence of the applicant. The record fails to establish that all of the reported expenses of the applicant's spouse are not discretionary. The record fails to demonstrate that the applicant's spouse is required to maintain ownership of an automobile that costs $400.87 per month or that the applicant's spouse requires access to cable television in his home at a cost of $50.97 per month. *See Statement of Financial Hardship*, undated. The AAO finds that the record fails to establish that the living arrangements of the applicant's spouse cannot be altered in order to accommodate a change in income. Moreover, the U.S. Supreme Court 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.

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 recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However, his situation, if her remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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