U.S. Department of Homeland Security
20 Massachusetts Ave., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

H4

FILE: [redacted] Office: MANILA, PHILIPPINES Date: MAR 28 2007

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:

SELF-REPRESENTED

PUBLIC COPY

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, 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 10 years of her last departure from the United States. The applicant has a U.S. citizen spouse and child and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse and the application was denied accordingly. *Decision of the Officer-in-Charge,* dated August 3, 2005.

On appeal, the applicant asserts that her spouse is suffering extreme hardship and that family separation may be enough to establish extreme hardship. *Form I-290B*, received September 2, 2005.

The record includes, but is not limited to, the applicant's statement, the applicant's spouse's statement and letters of support. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States on February 7, 1990 with a conditional lawful permanent residence card having an expiration date of February 6, 1992. On November 4, 1996, the applicant's Form I-751, Petition to Remove Conditions of Residence, was denied. On February 14, 2001, the applicant was ordered removed in absentia. On November 8, 2001, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, and it was withdrawn on or about November 15, 2002. The applicant was removed from the United States on December 13, 2002 pursuant to her removal order. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until December 13, 2002, the date of 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 or parent of an applicant. Hardship to an applicant's child is not a permissible consideration in a 212(a)(9)(B)(v) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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. 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. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to the Philippines or in the event that he remains in the United States as he 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 show extreme hardship to her spouse in the event of relocation to the Philippines. This prong of the analysis is not addressed by the applicant and will, therefore, not be considered.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant states that her spouse works long hours and her spouse misses her presence. *Applicant's Statement*, at 1-2 undated. The applicant states that it is financially hard to maintain two households. *Supplement to Form I-601*, at 2, dated March 11, 2005. The applicant's spouse states that his workday is fourteen hours long, that it would be difficult for him to work and also take care of his stepson, and that he worries about the safety of the applicant and his stepson in the Philippines. *Applicant's Spouse's Statement*, at 1-2 dated December 13, 2004. The record includes letters from friends and family who express comments similar to those of the applicant and her spouse. The AAO notes, however, that separation as a result of removal commonly creates emotional stress and financial and logistical problems. The record does not distinguish the hardships facing the applicant's spouse from those confronting

other individuals who have been separated from family members by removal. In addition, the record does not include substantiating evidence of emotional or financial hardship, other than the letters of support. 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)).

After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to the Philippines or in the event that he remains in the United States.

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.

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.