identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: AUG 06 2012 OFFICE: SANTA ANA, CA FILE: [redacted]

IN RE: APPLICANT: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, 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 has resided in the United States since May 28, 1998, when she presented a passport and a visa which did not belong to her to procure admission to the United States. She 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 procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 17, 2010.

On appeal, counsel for the applicant contends the applicant's spouse would be unable to relocate to the Philippines because of his medical and psychological conditions, loss of his employment, country conditions, and his family ties in the United States. Counsel asserts that the applicant's spouse would also experience extreme hardship upon separation from the applicant because of his worry over the applicant's safety and health in the Philippines, as well as his dependence on the applicant's support and companionship.

The record includes, but is not limited to, statements from the applicant and her spouse, medical and financial records, documents related to the spouse's employment, a psychological evaluation, evidence of birth, marriage, residence, and citizenship, other applications and petitions filed on behalf of the applicant, letters from physicians and community members, and articles on medical care and country conditions. The entire record was reviewed and considered in rendering 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.

In the present case, the applicant admits in a sworn statement that on May 28, 1998 she used a passport and a visa which she obtained from an unknown person for $1,000.00 to procure admission to the United States. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

applicant's health in the Philippines, as she has been diagnosed with high blood pressure, dizziness, insomnia, and eye problems. The applicant's spouse claims that his concern over the applicant's health and immigration status caused him to consult with a licensed clinical psychologist. In an evaluation, a licensed psychologist opines that the applicant's spouse suffers from major depression as a direct result of the applicant's possible deportation and his own uncertain future.

The record contains insufficient evidence of the applicant's medical conditions and of the availability of medical care in the Philippines to support the spouse's assertions. Although the licensed psychologist indicates that the applicant is under the care of two doctors and has been diagnosed with high blood pressure, dizziness, insomnia, and eye problems, there is no explanation in plain language from the treating physician of the exact nature and severity of any of her conditions. Furthermore, the record does not support contentions that adequate medical care is unavailable in the Philippines. The U.S. Department of State notes that adequate medical care is available in major cities in the Philippines. *Philippines: Country Specific Information, U.S. Department of State,* June 8, 2012. Moreover, there is no indication or evidence to show that the applicant and her spouse's two children and three grandchildren, who all reside in the Philippines, have had difficulty accessing adequate medical care there. Assertions related to terrorist attacks and safety concerns in the Philippines are not supported by the latest travel warning, which indicates that terrorist activity and insurgent activities are concentrated in the Sulu Archipelago and the island of Mindanao, not in Nueva Eciga, where the applicant and her spouse were born. *Travel Warning: Philippines, U.S. Department of State,* June 14, 2012.

The psychological evaluation indicates that the applicant's spouse experiences some psychological difficulties, and that he depends on his wife for companionship. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the emotional, medical, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without her spouse.

The applicant has also failed to demonstrate that her spouse would experience extreme hardship upon relocation to the Philippines. The record reflects that the spouse is a native of the Philippines, and lived there until he was around 35 years of age. There is no indication that the spouse has difficulty communicating in Tagalog, or that he would have difficulty adjusting to the culture given his background. Additionally, the record does not contain evidence to support the spouse's or counsel's assertions that adequate medical care would be difficult to access in the Philippines, or that the spouse, given his skill set, would have problems finding employment there. Although the spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded

it."). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, although the applicant's spouse asserts that relocation would sever family ties with his siblings residing in the United States, the AAO notes that the spouse's two adult children and three grandchildren live in the Philippines.

The AAO notes that relocation to the Philippines would entail giving up steady employment and employment benefits as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the Philippines.

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 her U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a 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.