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

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[redacted]

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FILE: [redacted] Office: MANILA, PHILIPPINES Date: APR 16 2010

IN RE: [redacted]

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

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Manila, the Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 48-year-old 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. The applicant is married to a citizen of the United States, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and son in the United States.

The OIC found that the applicant failed to establish extreme hardship to his wife, and denied the application accordingly. *See Decision of the OIC*, dated July 26, 2007. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on his wife. *See Form I-290B, Notice of Appeal*, dated Aug. 16, 2007.

The record contains, among other things, a copy of the couple's marriage certificate; a birth certificate for the couple's U.S. citizen son; a hardship statement by the applicant's wife; a psychological report for the applicant's wife; a letter from the applicant; a letter from the applicant's wife's employer; a rental agreement; tax records; the applicant's university transcripts; and various certificates relating to the applicant. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9) 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

> [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.

The record shows that the applicant was admitted to the United States on July 10, 1996, as a crewman (C1/D) with authorization to remain until August 8, 1996. The applicant did not depart with his vessel, and he was reported as a deserting crewman on January 11, 1997. The applicant was apprehended and served with a Notice to Appear on January 16, 2003. An immigration judge granted the applicant voluntary departure on June 23, 2003, and the applicant timely departed from the United States on October 18, 2003. The applicant accrued unlawful presence during the period from April 1, 1997, the effective date of the unlawful presence bar, to June 22, 2003. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act based on his unlawful presence for more than one year, and his departure from the United States. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 911 (BIA 2006).

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

> 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), the U.S. Supreme Court held 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's wife, [redacted], is a 45-year-old native of the Philippines and citizen of the United States. The applicant and his wife have been married for seven years, and they have a U.S. citizen son. [redacted] claims that the denial of the waiver causes extreme emotional and financial hardships.

Regarding the emotional hardship of separation, [redacted] states that she loves her husband very much, and that the separation is causing her depression. *See Statement of* [redacted] She states that she visits the applicant two times per year, and that the visits to the Philippines are expensive. *Id.* Further, [redacted] indicates that her marriage cannot continue under these circumstances. *Id.* Additionally, [redacted] notes that her son has been emotionally impacted by the applicant's absence, which adds to her psychological hardship. *Id.* A psychologist has opined that based on her depressive symptomatology, [redacted] suffers from a "Major Depressive Disorder as a direct result of being separated from her husband." *See Psychological Report by* [redacted], dated Mar. 26, 2007.

Regarding economic hardship, the record indicates that [redacted] has worked for Dunkin' Donuts since January, 1999, and that she earned approximately $25,000 in 2007. *See Statement of* [redacted] *see also Employer Letter*, dated Feb. 13, 2007. She states that she is "basically just managing to get by" financially, and notes the expenses of rent, child care, and legal fees incurred on behalf of the applicant. *Statement of* [redacted]

Although the record shows that family separation causes emotional and financial difficulties to [redacted] the evidence in this record does not demonstrate that the challenges, considered cumulatively, meet the extreme hardship standard. First, while the emotional hardship of separation is apparent from [redacted] statement and the psychological report, the record does not contain sufficient evidence, such as detailed testimony or medical evidence, to show that the psychological hardships that she faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Further, the AAO notes that the applicant's wife was referred to the psychologist by the applicant's attorney; the psychological evaluation was based on a single meeting of unspecified length; and despite the diagnosis, did not indicate that she requires treatment or further assessment. Second, any hardships to the applicant's son are not calculated in the extreme hardship analysis, except to the extent that these hardships impact [redacted] Although [redacted] states that she is concerned about her son's emotional well being, the record does not indicate that this concern rises to the level of extreme emotional hardship. Third, the economic detriment suffered as a result of the applicant's inadmissibility is not sufficient to warrant a finding of extreme hardship. *See Hassan,* 927 F.2d at 468; *see also Psychological Report, supra* (noting that [redacted] mother provides child care for her son, and that the applicant has part-time work as a driver in the Philippines).

Additionally, the applicant has not presented any evidence, such as detailed testimony, documentation regarding conditions in the Philippines, or other evidence, to support a claim that his wife's relocation to the Philippines would cause extreme hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66 (setting forth relevant factors). The AAO notes that [redacted] and the applicant did not discuss the possibility of [redacted] relocation to the Philippines to avoid the hardship of family separation.

In sum, although the applicant claims hardship to a qualifying relative based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch,* 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to [redacted] as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.