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

U.S. Citizenship and Immigration Services

[redacted]

H6

Date: FEB 17 2012 Office: MANILA, PHILIPPINES FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds 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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, 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 again seeking admission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

In a decision dated August 19, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 19, 2009.

On appeal, the applicant's attorney submitted an appeal brief detailing the hardships that the qualifying spouse would suffer if the applicant's waiver of inadmissibility is denied. The applicant's attorney asserted that the qualifying spouse relies on the applicant for support and care. Further, a letter from the qualifying spouse, provided on appeal, states that he is suffering emotionally, psychologically and physically due to the applicant's absence from his life. Moreover, the applicant's attorney contends that the qualifying spouse's length of stay in the United States, loss of employment, country conditions in the Philippines and close family, community and business ties to the United States prevent him from relocating to the Philippines to be with the applicant.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), briefs submitted on behalf of the applicant, letters from the qualifying spouse, a letter from the applicant's health-insurance provider, a declaration and statements from the applicant's daughter, country-conditions materials, a marriage certificate, a birth certificate for the applicant's child, a copy of pages from the qualifying spouse's U.S. passport, a copy of the applicant's child's permanent resident card, medical documentation concerning the qualifying spouse, the applicant's birth certificate, a letter from the qualifying spouse's mother and a copy of a page of her U.S. passport, financial documentation and documentation submitted with the applicant's visa application and prior adjustment application. The entire record was reviewed and considered in rendering a decision on the 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (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).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record indicates that the applicant entered the United States with a K-1 visa on October 5, 1989 and was authorized to stay in the United States until January 4, 1990. The applicant and the petitioner of the K-1 visa annulled their marriage before an Application for Adjustment of Status (Form I-485) was filed. In 2001, the applicant married the qualifying spouse. The applicant departed the United States on October 17, 2008. As such, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions, until April 26, 2001, the date that the applicant filed for adjustment of status, a period in excess of one year. The applicant also accrued unlawful presence from November 17, 2005, the date her Form I-485 was denied until her departure on October 17, 2008. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, as a result of the applicant's unlawful presence, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

The Field Office Director, in his decision dated August 19, 2009, concluded that the applicant's U.S. citizen spouse would face extreme hardship if he were to relocate to the Philippines to be with the

applicant due to his and his parent's medical issues, his loss of employment, his length of stay in the United States, and his family and community ties to the United States. The AAO affirms the prior decision of the Field Office Director with respect to finding hardship upon relocation of the qualifying relative to the Philippines.

However, the Field Office Director found that the applicant had failed to establish that the applicant's U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant remained in the Philippines due to her inadmissibility. On appeal, the applicant's attorney failed to provide sufficient evidence to demonstrate that the qualifying spouse would suffer extreme hardship if he remained in the United States without the applicant. As such, based on the evidence on the record, the AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him.

The record contains letters from the qualifying relative and a declaration and statements from the applicant's daughter. In the qualifying spouse's letter, he indicates that he is suffering emotionally and mentally as a result of the applicant's absence. The qualifying spouse indicates that he is experiencing weight loss, stress, sleeplessness, and trouble interacting with others. The qualifying spouse's daughter also states that she and her step-father, the qualifying spouse, have been lost without the applicant. This evidence fails to demonstrate with sufficient detail how the qualifying spouse's emotional and psychological hardships are outside the ordinary consequences of removal. Further, there was no documentary evidence provided to support the assertions regarding the emotional and psychological problems that the qualifying spouse is experiencing.

With regard to the qualifying spouse's physical hardships and the loss of the applicant as his caregiver, the record contains letters from the qualifying spouse and his doctor, and proof of his prescription medication. In his letters, the qualifying spouse indicates that the applicant takes care of his diet and makes sure that he takes his medications. In his letter of September 15, 2009, the qualifying spouse asserts that he has "lost a dramatic amount of weight" due to the applicant's absence. In his letter of August 5, 2009, the qualifying spouse indicates that his weight has increased and his condition has worsened. The letters from the qualifying spouse's doctor indicate that the applicant suffers from hypertension and morbid obesity, and that he is being treated with medication. Copies of the qualifying spouse's prescriptions also confirm his use of medications to treat his medical problems. However, both doctors' letters state that his blood pressure is well-controlled, and the qualifying spouse's hypertension and obesity were not explained in the letters. Although the qualifying spouse asserts that his medical issues require the applicant's assistance and that his medical problems are worsening without her, there is no evidence confirming such assertions. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). As such, the applicant failed to provide sufficient documentation regarding the qualifying spouse's emotional, psychological and health-related hardships to demonstrate his hardships as a consequence of separation.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.