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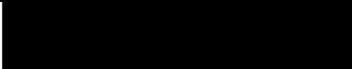
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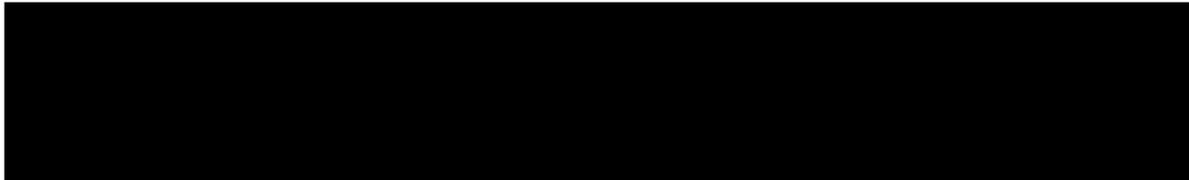
Date: JUN 05 2007

IN RE:



PETITION: 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 PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to gain entry into the United States. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), based on her marriage to [REDACTED] a naturalized citizen. The District Director concluded that the applicant failed to establish extreme hardship to her qualifying relative, her husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated September 15, 2004.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

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 chapter is inadmissible.

....

- (iii) Waiver authorized
For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 Attorney General 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 . . .

The record reflects that the applicant testified under oath that she had committed fraud by entering the United States under an assumed name using a passport and visitor visa that she purchased. *Decision of the District Director*, dated September 15, 2004. The district director was correct in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The AAO will now address the finding that the granting of a waiver of inadmissibility is not warranted here.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her son is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative here is the applicant's husband. 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 meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that are relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

On appeal, counsel states the following. The couple married on August 24, 1998. They have a son who was born on September 21, 2004. [REDACTED] is gainfully employed; [REDACTED] does not work in order to care for their son. The couple's child was born premature and has medical problems that require constant monitoring by a physician. [REDACTED] suffers from diabetes and his asthma requires constant monitoring by a physician, which his health insurance covers. [REDACTED] would suffer extreme psychological and emotional damage if he decides not to join his wife in the Philippines; the submitted psychological evaluation indicates he is depressed and worried about separating from his wife. [REDACTED] is concerned that his son will not have a stable home if he is not raised by his parents. Growing up in a single parent home has many more dangers than if a child has the stability of a two parent upbringing. *Tuchowinich vs. I.N.S.*, 64 F. 3d 460, 463-464 (9th Cir. 1995) indicates that personal hardship that flows from economic detriment may be a relevant factor for consideration in determining extreme hardship. He works as a security officer now and does not make a lot of money. Monthly household expenses of the [REDACTED] family total \$1,617; they live with his [REDACTED] mother who he pays \$500 a month plus utilities. The applicant has worked in the past and once their son is old enough she hopes to work again. [REDACTED] earns barely enough money to support his family. If he remains in the United States, he would have the expense of a babysitter and would not be

able to financially support his wife in the Philippines. Given [REDACTED] age and skills, he would be hard pressed to find employment in the Philippines that would support his family; he would not be able to afford health insurance there. The [REDACTED] son would not have the same quality education in the Philippines as in the United States. [REDACTED] and his son are U.S. citizens and for this reason would be targeted by terrorists in the Philippines. The political and economic factors in the Philippines, combined with the health problems of [REDACTED] and his son, make the applicant's deportation more than what is normally associated with family separation or deportation. Preventing family separation is a long-standing principle in immigration law, as shown in *Cerrillo-Perez vs. I.N.S.*, 809 F.2d 1429, 1425 (9th Cir. 1987).

The record contains declarations; employment verification letters; information about the Philippines; birth certificates; income tax and wage records; records pertaining to household expenses of the [REDACTED] family; a letter from [REDACTED] Department of Medicine, Kaiser Permanente Medical Center, dated September 8, 2003; a psychological evaluation; and other documentation. In rendering this decision, the AAO has considered the entire record of proceeding.

On appeal, counsel essentially summarized the statements contained in [REDACTED]'s declarations. However, the AAO notes that [REDACTED] also made the following assertions in his declarations. He cares very much for his wife. If separated, they will not be able to have children. He and his wife work so as to meet financial obligations. He will not be able to travel to the Philippines or telephone his wife because of cost. He has been diagnosed with Type II Diabetes and was prescribed Tolanace tablets to maintain his blood glucose level. He requires regular medical attention and check-ups. The economy and political situation in the Philippines is unstable. Living in the Philippines will separate him from his parents and siblings who live in the United States. He is a productive member of his religious community. He and his wife have embraced the American lifestyle. In the Philippines, they would have nowhere to live or stay because most of their family and friends live in the United States. He and his wife share the American dream of owning a home, raising children, and having a fulfilling job. All of their dreams will shatter if his wife is in the Philippines. *Declarations of [REDACTED], dated January 12, 2005 and January 24, 2004.*

[REDACTED] indicates that her child was born premature and with jaundice, and needs more care. *Declaration of [REDACTED] dated January 12, 2005.*

[REDACTED] is a patient at Kaiser Permanente Medical Center. He has diabetes mellitus Type II and is undergoing evaluation to determine whether he has Kallmann's syndrome, or a pituitary or brain tumor which is presenting itself in a similar fashion to Kallmann's syndrome. He has asthma and uses multiple inhalers for treatment. His sugars are checked regularly to control diabetes. If [REDACTED] stopped his treatment for asthma, it would exacerbate and might become life threatening. *Letter from [REDACTED] Kaiser Permanente Medical Center, dated September 8, 2003.*

The letter from [REDACTED]'s mother indicates that she shoulders some of the expenses of her son and daughter-in-law because her son's income is not enough to support his family. *Undated letter from [REDACTED]*

The AAO will now apply the *Cervantes-Gonzalez* factors here in determining extreme hardship to the applicant's husband. Extreme hardship to the applicant's husband must be established in the event that he

remains in the United States; and in the alternative, that he accompanies the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The AAO agrees with counsel in that U. S. courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

Nevertheless, the fact that the applicant has a U.S. citizen child is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

The record does not establish that the applicant's husband will endure extreme hardship if he remains in the United States without his wife.

The evidence in the record fails to establish that the Domingo family would endure extreme economic hardship if the applicant's waiver application were denied. [REDACTED] is a full-time employee, earning \$11.85 per hour as a security officer. *Letter from [REDACTED] dated January 9, 2003*. This equates to earnings of \$24,648 annually, which is sufficient to cover the Domingo's taxes and household expenses of \$1,617. Furthermore, the director was correct in stating that 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.

The record contains a letter from [REDACTED] describing [REDACTED] health problems. However, the letter does not establish that [REDACTED] diabetes mellitus Type II and asthma pose a serious health condition and the applicant must care for him. Although [REDACTED] states that [REDACTED] is [REDACTED]

undergoing evaluation to determine whether he has Kallmann's syndrome, no evidence has been furnished to confirm the diagnosis of Kallmann's syndrome or show that he has a pituitary or brain tumor. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The psychological evaluation of [REDACTED] by [REDACTED], licensed psychologist, states that [REDACTED] is experiencing symptoms of major depression in reaction to his fears that his wife may not be able to remain in the country. [REDACTED] states that major depression is a serious mental disorder that can result in significant impairment in social and vocational functioning. According to [REDACTED] [REDACTED] has increased dependency needs on his wife due to the difficulty he experienced in finding a compatible mate, and his depression will increase if his wife is forced to leave the country. [REDACTED] states that the relationship of the [REDACTED] is at a critical stage as they are attempting to conceive a child.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the [REDACTED] and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] or any history of treatment for the major depression suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The applicant's husband will undoubtedly experience emotional hardship if separated from his wife. The AAO is mindful of and sympathetic to the emotional hardship that results from separation from a loved one, and it notes that [REDACTED] is very concerned about the emotional impact of the separation of his son from the applicant. He expresses that his son will not have a stable home if he is not raised by both parents. Nevertheless, the AAO finds that [REDACTED]'s situation, if he 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 based on the record. Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra.*

The record fails to establish that [REDACTED] will endure extreme hardship if he joins the applicant in the Philippines.

The conditions of the country in which the alien and his or her family will be returning are relevant in determining hardship. However, economic hardship claims of not finding employment in the Philippines and not having proper medical care benefits do not reach the level of extreme hardship. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit stated that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra.* In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the

Ninth Circuit upheld the BIA's finding that the petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute "extreme hardship and that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship." As previously stated, 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. *INS v. Jong Ha Wang, supra*.

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [REDACTED] claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

[REDACTED]'s claim of economic hardship stemming from inability to find work in the Philippines is not supported by evidentiary material. The submitted U.S. Department of State report provides general information about the social, economic, and political conditions in the Philippines, but it is not specific to the circumstances of [REDACTED] and his wife. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. It is noted that [REDACTED] has family ties in the Philippines and previously worked at a relative's tailoring business. *Record of Sworn Statement in Affidavit Form, subscribed and sworn on January 24, 2004*.

[REDACTED]'s hardship claims regarding health care are not persuasive in establishing extreme hardship. Loss of group medical insurance and "second class" medical facilities in foreign countries are not considered "extreme hardship." See *Carnalla-Munoz, supra*, and *Matter of Correa, supra*. Furthermore, there is no evidence in the record establishing that [REDACTED] or his son has a significant condition of health and that suitable medical care is not available in the Philippines. The assertion by [REDACTED] about her child's need for more care because he was born premature is not sufficient in itself to establish that her child has a serious medical condition. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The fact that economic and educational opportunities for the Domingo's American-born child are better in the United States than in the alien's homeland does not establish extreme hardship. See, e.g., *Matter of Piltch*, 21 I&N Dec. 627, 632 (BIA 1996), citing *Matter of Kim*, 15 I&N Dec. 88 (BIA 1974) and *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986) (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship). Thus, the claim of reduced educational opportunities for [REDACTED] child is not persuasive in establishing extreme hardship. Furthermore, [REDACTED] son is still of pre-school age and thus less susceptible to the disruption of education and change of culture involved in moving to the Philippines.

need to acculturate to life in the Philippines and his separation from his parents, siblings, and relatives in the United States do not establish extreme hardship. *Matter of Piltch, supra* at 631, states that separation from a family member or cultural readjustment do not constitute extreme hardship.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.