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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date:

NOV 05 2007

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:

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.

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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is married to [REDACTED], a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated February 13, 2004.* The applicant submitted a timely appeal.

The AAO will first consider the finding of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The record contains the Form I-485, Application to Register Permanent Resident or Adjust Status, which conveys that the applicant entered the United States with a passport and visa bearing a false name. In an affidavit dated March 4, 2004 the applicant states that she entered the United States as a crewman under the name "[REDACTED]" Based on the record, the AAO finds that the applicant gained admission into the United States by fraud and misrepresentation of a material fact, her identity. Thus, she is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address whether a waiver of inadmissibility is warranted.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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 child is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED] 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).

The record contains, in addition to other documents, a psychological evaluation; photographs; letters from the applicant's in-laws, husband, and friends; employment letters; birth certificates; a marriage certificate; real estate documents; documents related to the business owned by the applicant's husband and sister-in-law; documents related to cars; bank statements; wage statements; medical records; a country report on the Philippines and other such documents; and income tax records.

In an August 16, 2001 letter [REDACTED] described his relationship with his wife, siblings, and parents. He indicated that he and his wife are expecting a child and his parents are excited about this, and that he wants the child raised as an American. He stated that he is monolingual and feels helpless when in Taiwan. [REDACTED] stated that they purchased their first home and would incur a financial loss if forced to sell it.

A March 8, 2006 letter from [REDACTED] indicated that [REDACTED] came to the United States to be with relatives and to "earn a decent living," and that she made a mistake using a false passport to enter the United States. She stated that she has a son and stopped working to care for her family.

The record reflects that [REDACTED] earned nearly \$70,000 in 2004 while employed with ADP-Pro Business. It indicates that he works from his house.

The record contains the Franchise Agreement executed on November 18, 2003 between [REDACTED] and his sister and [REDACTED].

The letters from the applicant's in-laws and friends convey the applicant should be permitted to remain in the United States with her son, husband, friends, and extended family.

The AAO has carefully considered all of the evidence in the record in rendering this decision.

Extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that the qualifying relative remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"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, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers 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 565-566. 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 asserts that the district director abused his discretion by failing to properly consider the evidence in the record and balance the positive and negative factors, by attaching excessive weight to Ms. [REDACTED] misrepresentation, and by disregarding [REDACTED] extreme hardships. Counsel states that the denial was based on incomplete and inadequate evidence as a result of former counsel’s ineffective assistance. Counsel states that [REDACTED] would have difficulty adjusting to life in the Philippines, a country he has never visited; that [REDACTED] is Chinese and would be a kidnapping target on account of his ethnicity; and that Mr. [REDACTED] does not know the Tagalog language. Counsel asserts that the director did not address the Hong’s child-to-be. Counsel states that the [REDACTED] would experience psychological and emotional distress if separated and, if [REDACTED] and his son joined his wife in the Philippines, the hardships experienced would include employment, education, political, cultural and social trauma, housing, and transportation. Counsel describes why [REDACTED] merits the exercise of favorable discretion.

The record establishes that the applicant’s husband would endure extreme hardship if he remains in the United States without her.

Courts in the United States 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).

The initial psychiatric consultation by [REDACTED] indicated that [REDACTED] had symptoms of acute depression after he found out that his wife was to be deported. [REDACTED] stated that [REDACTED] had AXIS I: 296.23, a Major Depression Single Episode Severe; AXIS III: Hypercholesterolemia; AXIS IV: Severe 4 Primary Support – Fear of losing his wife through deportation and possibly losing his son; AXIS V: Current GAF: 40-42 [REDACTED] is barely able to work because of the severity of his depression and symptoms of anxiety. [REDACTED] states that [REDACTED] may require psychiatric hospitalization and may become overtly suicidal and pose a definite suicidal risk. He stated that he gave [REDACTED] Lexapro 10 mg and scheduled another meeting with him. *Initial Psychiatric Consultation, dated March 11, 2004.*

The record conveys that [REDACTED] is very concerned about separation from his wife and the impact of the separation on his son who is now five years old. After a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant’s husband, if he remains in the United States without his wife, rises to the level of extreme hardship as defined by the Act. The record before the AAO is sufficient to show that the emotional hardship, which will be endured by the applicant’s husband, is unusual or beyond that which is normally to be expected upon removal.

The present record is insufficient to establish that the applicant's husband would endure extreme hardship if he joined the applicant in the Philippines.

The conditions in the Philippines, the country where the applicant's husband would live if he joins his wife, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The submitted country report and the articles on the Philippines are insufficient to substantiate the claim that kidnapping is so pervasive in the Philippines that [REDACTED] would be kidnapped if he lived there. No evidence has been presented of specific threats of kidnapping or violence against [REDACTED]. "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, 500 (7th Cir. 1996) (citation omitted). 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)).

Counsel states that the [REDACTED] would experience financial hardship if they lived in the Philippines. She states that [REDACTED] may lose his house and Subways Franchise, would not be able to pay credit card debt, and would either pay a high customs fee to import their vehicles to the Philippines, pay a high storage fee to keep them in the United States, or sell the vehicles to pay for public transportation in the Philippines.

The AAO finds these assertions unpersuasive in establishing extreme hardship to [REDACTED]. Loss of an investment did not constitute extreme hardship in *Chokloikaew v. INS*, 601 F.2d 216, 218 (5th Cir. 1979). The court in *Santana-Figueroa* noted that "loss of an investment by an affluent alien is nothing more than economic detriment." *Santana-Figueroa v. INS*, 644 F.2d 1354, 1357 (9th Cir. 1981) (citing *INS v. Jong Ha Wang*, 450 U.S. 139 (1981)). Loss on the sale of a home and the loss of present employment and its employee benefits does not constitute extreme hardship; rather, "it is a normal occurrence when an alien is deported." *Marquez-Medina v. INS*, 765 F.2d 673, 676-77 (7th Cir. 1985).

With regard to the [REDACTED] claim of hardship in finding employment in the Philippines, U.S. court and BIA decisions have shown that the difficulties experienced in obtaining employment and the general economic conditions in a country are insufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and *Matter of Kim*, 15 I&N Dec. 88, 89 (BIA 1974) (economic opportunities in a foreign country that may be somewhat less than they are in the United States is not, by itself, sufficient to establish "extreme hardship").

As for the claims that the [REDACTED] will lose their health insurance and life insurance, and will not have the same level of medical care, the fact that medical facilities in a foreign country are not as good as in the United States is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984). The loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence

when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). Because life insurance and health insurance are offered as employee benefits, the loss of life insurance would not constitute extreme hardship.

Courts have held that extreme hardship is not established by a lower standard of living in the applicant's home country. A lower standard of living in Mexico did not establish extreme hardship in *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982). In *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th Cir. 1981) the court stated that "[e]ven a significant reduction in standard of living is not, by itself, a basis for relief." (citation omitted)

Counsel indicates that [REDACTED] has lived his entire life in the United States and would not be able to adjust to life in the Philippines. The AAO recognizes that adjustment to the culture and environment in the Philippines would be difficult; but these difficulties will be mitigated by the moral support of [REDACTED] wife and in-laws, which are his family ties to the Philippines, and by the fact that English is the language of government and instruction in education in the Philippines, as shown in the U.S. Department of State website, www.state.gov. Furthermore, the record suggests that the Hongs have financial resources to ease their transition to life in the Philippines.

The record conveys that [REDACTED] is concerned about separation from his family in the United States. Courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir. 1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); *Banks v. INS*, 594 F.2d 760, 763 (9th Cir. 1979) (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985) (no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child")

The record before the AAO is insufficient to show that the emotional hardship, which will be endured by Mr. [REDACTED] if he is separated from his parents and siblings is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shoostary, Perez, Guadarrama-Rogel, Banks, and Dill, supra*, finding separation of family does not constitute extreme hardship.

Although hardship to the [REDACTED]-five-year-old son is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his son, is a relevant consideration. With regard to the education of [REDACTED]'s son, the instruction of education in the Philippines is in the English language. See *U.S. Department of State website, www.state.gov*. The AAO finds that no evidence has been presented by the applicant to demonstrate that education in the Philippines is inferior to that offered in the United States. 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)).

The AAO notes that the applicant has an opportunity on appeal to submit additional evidence, facts, and legal arguments. The claim of ineffective assistance is therefore not relevant in determining 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 removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship in the event that the applicant's spouse were to join the applicant in the Philippines. 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(i) of the Act, 8 U.S.C. § 1182(i), 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.