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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

Date: JAN 02 2008

IN RE:

[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), 8 U.S.C. section 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 is a native and citizen of the Philippines who was found 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Alien for Relative Petition (Form I-130) filed by her U.S. citizen spouse and 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 spouse.

The record reflects that the applicant used a passport and visa belonging to an individual named [REDACTED] to be admitted to the United States as a tourist on August 10, 1997. The applicant and her husband, [REDACTED] were married in the United States on May 11, 2003. The applicant's spouse is a native of the Philippines who became a naturalized U.S. citizen on May 16, 2001. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on October 14, 2003. The petition was approved on May 24, 2004. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on October 14, 2003 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 14, 2004.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated September 23, 2004.

On appeal, counsel contends that the district director disregarded evidence that clearly shows that the applicant's U.S. citizen spouse will suffer extreme hardship should she be forced to leave the country. Counsel asserts that the district director "violated existing jurisprudence" when it did not consider the hardship factors presented by the applicant in isolation rather than cumulatively.

The record contains a declaration from the applicant's spouse; a letter from the applicant's spouse's physician, [REDACTED] a psychological evaluation of the applicant's spouse by [REDACTED] employment and tax records for the applicant's spouse; a copy of the deed for the applicant's house; copies of utility bills; reports and articles concerning employment and economic conditions in the Philippines; copies of U.S. passports for the applicant's spouse and siblings; copies of the applicant's insurance cards; family photographs; consular information sheet for the Philippines; article concerning safety of travel to the Philippines; copy of the applicant's son's birth certificate; copy of the applicant's spouse's naturalization certificate; and a copy of the marriage certificate for the applicant and her spouse. The entire record was considered in rendering a decision on the appeal.

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.

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.

As stated above, the record reflects that the applicant used a passport and visa belonging to an individual named Emely Valletero to be admitted to the United States as a tourist on August 10, 1997.

A waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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 566.

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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The Ninth Circuit Court of Appeals has stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel lists the following eight hardship factors:

1. The applicant’s U.S. citizen spouse depends on the applicant to care for him because of his severe case of varicose veins and the chronic pain he suffers as a consequence of a vehicular accident.
2. The applicant’s spouse suffers from depression and is vulnerable to a major depressive disorder if separated from the applicant.
3. The applicant’s spouse will suffer financial hardship if the applicant is forced to leave the country.
4. The applicant’s spouse will lose family and social ties if he follows his spouse to the Philippines.
5. The applicant’s spouse will be unable to find work in the Philippines if he relocates there.
6. The applicant’s spouse will lose his health insurance, which would make him more vulnerable because of his medical condition.
7. Social and political conditions in the Philippines will cause the applicant’s spouse hardship.
8. The applicant’s spouse will experience hardship raising his U.S citizen child alone if the applicant is removed.

On the Form I-290B, counsel also indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. On September 20, 2007, the AAO sent a notice by fax to counsel stating that no such documentation had been received, and requesting that a copy of any additional brief or evidence along with evidence of the date it was originally filed be submitted within five business days. To date, no response to this notice has been received. Therefore, the record is considered complete.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s husband faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's husband would suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any medical or psychological consequences would constitute extreme hardship when considered with other hardship factors. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter of [REDACTED] is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the current or past disorders 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 the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. [REDACTED] states that the applicant's spouse described symptoms indicating that "he is experiencing a reemergence of depressive symptoms" and that separation from his wife "can be expected to have a significant negative emotional impact." [REDACTED] does not state that he treated the applicant's spouse for any prior disorder, or for any current conditions, and the applicant has submitted no other medical records detailing her husband's past or current mental health conditions.

The applicant's spouse has asserted that he suffers chronic pain as a result of a vehicular accident "sometime in 2000," but has submitted no additional evidence of this accident or of its health consequences. [REDACTED] states in his letter that the applicant suffers from "a severe case of varicose veins" and that his wife is "instrumental" in providing him with medical and emotional support for the chronic pain he suffers. However, [REDACTED] does not specify what medical treatment the applicant's spouse requires for his condition, or provide details concerning the medical care the applicant provides. The applicant's spouse indicates in his declaration that the applicant assists him by reminding him to take his medication, but there is no other evidence that the applicant provides medical care to her spouse or that he will suffer additional medical problems in her absence. Furthermore, although the applicant's spouse has asserted that he will lose his medical insurance if he relocates to the Philippines, there is insufficient specific evidence showing that he will be unable to afford and obtain medical care there.

Although the statements by counsel and the applicant's husband are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *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)).

Likewise, the applicant has submitted insufficient evidence showing that denial of the waiver will cause her spouse financial hardship. In his affidavit, the applicant's spouse states that the applicant earns about \$2,000 a month, which, when coupled with his salary, allows the couple to meet their monthly expenses. However, the record does not contain evidence of the applicant's employment and salary to support these assertions. Furthermore, although the applicant has submitted general information concerning employment and economic

conditions in the Philippines, he has failed to demonstrate with specificity that the applicant's husband will be unable to find adequate employment should he relocate there.

The AAO recognizes that relocation to the Philippines would cause social and economic disruption for the applicant and her husband, but the hardship described by the applicant is the typical result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *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.

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. 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, the burden of proving eligibility rests 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.