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U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date: JUL 07 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)

ON BEHALF OF PETITIONER:

[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.

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, Los Angeles, 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 to be 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 procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the husband of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 and reside with his spouse.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated February 7, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in concluding that the applicant's wife would not suffer extreme hardship if the applicant were removed from the United States. Specifically, counsel states that the applicant's wife suffers from schizoaffective disorder, her condition will be aggravated if she is separated from the applicant, and she will suffer financial hardship without the applicant's income. *Brief in Support of Appeal* at 3. Counsel also states that the applicant's wife would suffer extreme hardship if she were to relocate to the Philippines because she has lived in the United States her entire life and does not speak Tagalog, she would be separated from her family in the United States, she and the applicant would be unable to find work, and she would not have access to treatment for her psychiatric condition. *Brief* at 5-7. Counsel further states that the applicant's son, who obtained Lawful Permanent Resident status while the waiver application was pending, would also suffer hardship if the applicant were removed from the United States, and this hardship must be considered by CIS in adjudicating the waiver application. *Brief* at 7-8.

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 Act is inadmissible.

Section 212(i) of the Act provides:

(1) The [Secretary] may, in the discretion of the [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 [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.

The AAO notes that the record contains several references to hardship the applicant's Lawful Permanent Resident son would suffer if his father were removed to the Philippines. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's son will not be separately considered, except as it may affect the applicant's spouse.

Counsel relies upon *Delmundo v. INS*, 43 F.3d 436 (9<sup>th</sup> Cir. 1994), to support an assertion that CIS's "failure to weigh all family factors" is reversible error. *Brief* at 2. The court in that case did not hold, however, that hardship to children must be considered in determining whether a qualifying relative for a 212(i) waiver would suffer extreme hardship. Rather, the court held that the BIA erred in denying a motion to reopen because, in determining whether the applicant would merit the underlying relief as a matter of discretion, it failed to consider hardship to the children. In the present case, the waiver was not denied as a matter of discretion, but because it was determined the applicant had not met the statutory requirement of establishing extreme hardship to the only qualifying relative, his spouse. Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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 *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court additionally 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 reflects that the applicant is a forty-four year-old native and citizen of the Philippines who entered the United States in 1993 with a fraudulent Philippines passport and U.S. visa under the name [REDACTED]. The record further reflects that the applicant's wife is a thirty-four year-old native and citizen of the United States whom the applicant married on April 10, 1996. The applicant and his wife reside in Reseda, California with the applicant's son, a twenty-four year-old Lawful Permanent Resident who was born in the Philippines. The applicant also has two sons who reside in the Philippines.

The record contains a brief from counsel, a note from the applicant's wife's doctor, a fact sheet on schizoaffective disorder from the website of the National Mental Health Association, a declaration from the applicant's wife, hospital records and medical bills, letters from relatives of the applicant's wife, and a letter from the applicant's son. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel asserts that if the applicant is removed from the United States, his wife's mental condition will worsen and she will suffer extreme psychological and financial hardship as a result of the separation. In support of these assertions, counsel submitted with the appeal a note from the applicant's wife's doctor stating that she suffers from schizoaffective disorder. *See note from [REDACTED] Exhibit A*, dated February 23, 2006. Counsel states that the applicant's wife, who is employed as a security guard, relies on the applicant to take her to her psychiatrist, pay her medical bills, buy her medication, and provide her with health insurance, and further claims that without the applicant's income, she would not be able to afford her treatment and medication. *Brief* at 3. He states that without the applicant's support, his wife "would not be able to take care of her mental disorder," and "her life would be endangered" if the waiver application is denied. *Brief* at 4. The applicant's wife states in her declaration that she currently sees a psychiatrist once a month and takes medication for her condition, and she believes that her condition would be aggravated if the applicant were removed from the United States, possibly leading to hospitalization. *See declaration of [REDACTED] Exhibit D*, dated March 4, 2006. She further states that she was hospitalized for six days upon learning that her husband's waiver application had been denied. *Id.* She additionally states that she relies on her own health insurance policy as well as her husband's to cover the cost of her treatments and fears she would not be able to work if her medical condition worsens. *Id.*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. There is insufficient evidence on the record to establish, however, that the applicant's wife would suffer extreme hardship due to her mental condition if the applicant were removed from the United States. The note from her doctor states that she suffers from schizoaffective disorder, but contains no more information about the seriousness of her condition or any prescribed treatment or medications. The information sheet from the National Mental Health Association provides a brief and general overview of typical symptoms and treatment for schizoaffective disorder, but is not specific to the applicant's wife. Medical records submitted by counsel, including hospital bills and insurance statements, indicate that the applicant's wife has been hospitalized several times from 2000 to 2006, though no details are provided concerning the reason for the hospitalizations or any treatment received. The AAO notes that aside from these medical bills and the brief note from the doctor, the record contains no other information on her condition, such as a detailed letter from the treating

physician explaining the nature of the condition, the long-term prognosis, the treatment and medication prescribed, and the type of assistance that family members would need to provide. The applicant's wife states that she fears her condition will worsen and she will possibly require hospitalization and lose her job if the applicant is removed, but there is no medical evidence to support this assertion. Further, although she states she is receiving ongoing treatment from a psychiatrist, no information is provided by her doctor about her condition or the possible effects of separation from the applicant or relocating to the Philippines. Without more detailed information from a mental health professional familiar with applicant's wife's condition, the AAO is not in a position to reach conclusions concerning the severity of the psychological condition, the treatment and assistance needed by the applicant's wife, or the impact of the applicant's removal on his wife's mental health.

The evidence on the record is insufficient to establish that any emotional harm the applicant's wife is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Counsel additionally asserts that the applicant's wife "does not have any college degree and just works as a security officer" and that she would be unable to afford her medications and treatments without the applicant's financial support. *Brief* at 3-4. The applicant's wife also states that she depends on the applicant financially, especially to pay her medical bills. She further states, "If [REDACTED] has to leave the U.S., I would not be able to afford seeing my psychiatrist regularly for my mental illness. I would not be able to afford the medicines I am currently taking." *See declaration of [REDACTED]*. Although counsel asserts that the applicant's wife would suffer financial hardship if the applicant were removed from the United States, there is no evidence on the record documenting the income, living expenses, and financial situation of the applicant and his wife. 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)). It is not clear from the record to what extent the applicant's wife, who is employed and has her own health insurance, is financially dependent on the applicant, but even if the loss of the applicant's income would have a negative impact on her financial situation, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to the Philippines because "her long-term psychiatric treatments will be disrupted" and she would lose her health insurance and "will not likely find the same health benefits in the Philippines, as she and her husband will not likely find a job there." *Brief* at 5. Counsel further states, "As the couple will not be able to find jobs in the Philippines, they will not be able to afford her psychiatric treatments, hospital admissions, and medicines in the

Philippines.” *Brief* at 5-6. No evidence was submitted concerning economic conditions or access to medical care in the Philippines, and without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further asserts that the applicant’s wife will suffer extreme hardship “in transitioning to the daily life in the Philippines,” and cites the decision of the BIA in *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45 (BIA 2001), to support this assertion. *Brief* at 6. The AAO notes that this decision involved a fifteen year-old U.S. Citizen child whom the BIA found would suffer extreme hardship if she relocated to Taiwan with her parents. It can be distinguished from the present case because it involved a high school student who had spent her entire life in the United States and was found to be insufficiently fluent in the Chinese language to adapt to life in Taiwan. The BIA based the decision largely on the age of the child and the effect relocation would have on her education and social development, stating, “to uproot [her] at this stage in her education and her social development and to require her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship.” *Id.* Counsel additionally asserts that the applicant’s wife would suffer as a result of being separated from her family members in the United States, including a sister whom she sees more than once a month and her mother, grandfather, and sister, whom she sees about three times a year. *Brief* at 6-7. Counsel further assert that the applicant's wife will not be able to afford the cost of travel between the United States and Philippines because she will be unable to find work there, and as a result she will become depressed and her medical condition will worsen. As noted above, no documentary evidence was submitted concerning the ability of the applicant or his wife to find employment in the Philippines or of the effect relocating to the Philippines would have on her mental condition. Separation from family members is a type of hardship commonly experienced as a result of deportation, and the record does not establish that the effects the separation on the applicant’s wife would amount to hardship beyond that which would normally be expected.

Based on the evidence on the record, any psychological, emotional, or financial hardship the applicant’s wife would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

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 his U.S. Citizen wife 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 the applicant 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 remains entirely with the applicant. 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.