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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SACRAMENTO, CA

Date: **MAY 13 2008**

IN RE:

Applicant:

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:

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 Field Office Director, Sacramento, 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant, who is the husband of a citizen of the United States, sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the field office director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Field Office Director*, dated December 13, 2007. The applicant filed a timely appeal.

On appeal, counsel indicated that she would be submitting a brief or additional documentation to the AAO within 30 days. On May 12, 2008 the AAO requested a copy of the brief or additional documentation. Counsel responded that she had not filed a brief, but requested that the AAO consider the arguments presented on the Form I-290B. The record is therefore considered complete.

The AAO will first address 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 reflects that the applicant gained admission into the United States by presenting to an immigration inspector a passport and visa in the name of Redintor Redoso. Because the applicant willfully misrepresented to an immigration inspector a material fact, his identity, so as to gain admission into the United States, the AAO finds he is inadmissible under section 212(a)(6)(C) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not 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 an applicant and to his or her child are 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 his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. 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, 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).

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant to live in the Philippines, and in the alternative, that she remains in the United States without 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 record contains declarations from the applicant's wife and from his father-in-law, income tax returns, birth certificates, a marriage certificate, a Notice of Entry of Judgment, a Child Support Case Registry Form, a Judgment of Dissolution, a Child Custody and Visitation Order Attachment form, information about the Philippines by the Bureau of Consular Affairs and the U.S. Department of State, photographs, medical records, an employment letter, Western Union statements, and other documents.

The employment letter conveys that the applicant's wife has been employed as a psychiatric technician assistant since June 1, 1999, earning \$2,732 each month. *Letter dated July 25, 2006 by Sonoma Developmental Center.*

The income tax records for 2005 reflect total income of \$52,374 and for 2006 it is \$52,870. The W-2 Forms show the applicant's wife as earning \$52,374 in 2005 and \$51,573 in 2006.

The birth certificates in the record show the applicant and his present wife as having a U.S. citizen daughter, [REDACTED], who was born on February 14, 2004. The applicant also has a U.S. citizen son, [REDACTED], who was born on March 19, 2001, with his former spouse.

In his declaration, the applicant's father-in-law conveys that he is 85-year-old widower who has hypertension, gout, and diabetes, and has had cataract surgery. He states that he is very close to his daughter-in-law and would be devastated if she were to live in the Philippines for she visits him at least three times every week, takes him grocery shopping, and attends medical appointments with him at least two times every month.

The medical records of the applicant's wife show that she had been admitted for preeclampsia at 35 weeks in 2004. The letter by [REDACTED] D, dated July 16, 2007, conveys that the applicant's wife is pregnant and her expected delivery date is December 14, 2007. Dr. [REDACTED] states that the applicant's wife's last pregnancy was complicated by severe high blood pressure and preeclampsia and that this may reoccur. Dr. [REDACTED] states that it would be helpful if the applicant assisted his wife with the care of their daughter during the pregnancy and the postpartum time.

The medical records of the applicant's daughter reflect that she was diagnosed with a febrile seizure when she was 19 months old.

The record shows the applicant and his wife, his daughter, and his son as having Kaiser Permanente insurance.

The record contains information about preeclampsia and high-risk pregnancy.

The applicant's wage statements for the pay periods of March 1 – 15, 2007 and April 1 – 15, 2007 reflect an hourly pay rate of \$10; his wage statement by Corey Delta, Inc., which was submitted on appeal, shows an hourly pay rate of \$20.

The child support form conveys that the applicant has joint legal custody of his son but does not have physical custody. The court records do not indicate the applicant's financial obligation, if any, for his son.

In her declaration, the applicant's wife conveys that her father and siblings live in the United States, that she and her husband have a daughter, and that she is the stepmother to her husband's son, who lives at their house for extended periods of time. She states that if she remained in the United States she would be a single mother with two children and her relationship with her step-son would be lost. She states that she would suffer knowing that her husband would no longer be able to support his son, and her step-son's mother would not be able to provide adequate care because of her menial jobs. The applicant's wife indicates that she had difficulties with her first pregnancy and that her family has health insurance and would not have adequate healthcare and emergency services in the Philippines. She states that her daughter is prone to febrile seizures whenever she has a fever. She states that she has no close family members in the Philippines. The applicant's wife states that she would suffer knowing that her father would not have her financial and emotional support if she were to live in the Philippines. She claims that the Philippines is a dangerous country, that terrorism and kidnappings are on the rise and U.S. citizens are targeted, and that there is a high crime rate. She states that they would not survive economically in the Philippines, a country where 40

percent of the population lives below the poverty line and the infrastructure and education are poor. She states that they are financially supporting the applicant's two children who live in the Philippines. She states that women are discriminated against in the Philippines and her daughter would not have the same educational opportunities in the Philippines.

On appeal, counsel states that the district director misunderstood the term "extreme hardship." She states that the BIA requires that family ties of the qualifying relative be considered in determining hardship and that the applicant's wife has an aging parent, siblings, and a daughter and a step-son living in the United States, and no family ties to the Philippines. Counsel states that the political and economic conditions of the Philippines were not considered by the district director. She states that the applicant's wife would experience financial hardship because she will be on maternity leave and will need her husband's support, and that the 2006 income tax records should not be considered in light of these new circumstances. Counsel states that the applicant's husband just recently obtained employment authorization. Counsel states that the district director did not properly weigh and balance the hardship and the fraud, and there is no basis to deny the waiver as a matter of law.

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

The AAO finds that the record fails to establish extreme hardship to the applicant's wife in the event that she were to remain in the United States without the applicant.

No evidence in the record establishes that the applicant's wife would experience extreme financial hardship if she were to remain in the United States without the applicant. In 2006, the applicant's wife financially supported the [REDACTED] family. Other than the sales contract for a vehicle, the record contains no documentation of the monthly household expenses of the [REDACTED] family. Even though the applicant's wife is expected to give birth in 2007, without documentation of household expenses, the AAO cannot determine whether the applicant's wife would experience extreme financial hardship without her husband's income, which is shown as \$20 per hour with Corey Delta, Inc. 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)).

With regard to family separation, 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).

However, the fact that an applicant has children born in the United States is not sufficient, in itself, to establish 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). The court in *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), indicates that an illegal alien cannot gain a favored status merely by the birth of a citizen child, as

did the court in *Lee v. INS*, 550 F.2d 554 (9<sup>th</sup> Cir. 1977), which states that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> 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.

The record conveys that the applicant's wife is very concerned about separation from her husband and his separation from their daughter and his son. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's wife, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

The record reflects that the applicant's wife is pregnant and the July 16, 2007 letter by Dr. Kelley indicates that the applicant should be present during the pregnancy and postpartum period to support his wife. It is noted that on appeal, which was filed after the applicant's spouse's due date, no documentation was submitted to show that the applicant's wife has had difficulties during and after her pregnancy that would require the physical presence of her husband.

The record is insufficient to establish that the applicant's wife would experience extreme hardship if she were to join the applicant to live in the Philippines.

The conditions in the country where the applicant's wife would live if she joined the applicant 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 applicant's wife claims extreme hardship on account of terrorism, kidnappings, and crime in the Philippines, and documentation in support of her claim is submitted into the record. However, the country report and the information by the Bureau of Consular Affairs do not substantiate the claim that terrorism, kidnappings, and crime in the Philippines is so widespread that the applicant's wife's life would be in danger. No evidence has been presented to establish that the applicant's wife would be specifically targeted

by any group or person. In *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) the court states that “[g]eneral 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.” (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)).

The applicant’s wife conveys that she is concerned about the well-being of her daughter if they were to live in the Philippines. As previously stated, although hardship to an applicant’s child is not a consideration under section 212(i) of the Act, the hardship endured by the applicant’s spouse, as a result of her concern about the education of their child, is a relevant consideration.

The applicant’s wife asserts that her daughter would not have the same educational opportunities in the Philippines. In *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986), the court stated that “[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute “extreme hardship.” *Id.* at 499.

The applicant’s wife indicates that her family would not have health insurance or adequate healthcare in the Philippines. 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 (7<sup>th</sup> Cir. 1985). Because the health insurance of the applicant’s wife is offered as employee benefit, its loss would not constitute extreme hardship.

With regard to the quality of healthcare in the Philippines, 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). Although the applicant submitted medical records to show that his daughter had a febrile seizure when she was 19 months old, no additional documentation has been presented to show that she has had ongoing serious health problems since then.

The applicant’s wife indicates that it would be difficult surviving in the Philippines. Difficulties in obtaining employment in a foreign country are not sufficient 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); and *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”).

The applicant’s wife states that she will not be able to emotionally and financially assist her father if she were to live in the Philippines. As previously stated, a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. Furthermore, in *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir. 1981) the court found that separation of parents from their alien son is not extreme hardship where other sons are available to provide assistance. Here, the applicant’s wife has indicated that she has siblings who live in the United States; thus, her father would not be alone if she were to live in the Philippines with her husband.

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 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).

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. *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.