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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MANILA, PHILIPPINES Date: **NOV 28 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:

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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, Philippines, 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 sought to procure a nonimmigrant visa through fraud or misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his spouse.

The officer-in-charge 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 Officer-in-Charge* dated July 14, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“USCIS”) abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Specifically, counsel claims that USCIS failed to consider several factors related to the hardship the applicant’s wife would suffer if the applicant is denied admission to the United States, particularly the hardship caused by separation from family members. *Brief in Support of Appeal* at 2. Counsel further states that the applicant’s wife would suffer extreme hardship if she relocated to the Philippines with the applicant because she would be deprived of adequate medical care for various medical conditions, would suffer financially due to loss of her employment in the United States and difficulty finding employment in the Philippines, and would be exposed to dangerous conditions in the Philippines. *Brief* at 5-9. Counsel additionally asserts that USCIS erred in determining that the applicant’s misrepresentation of his identity when applying for a nonimmigrant visa constitutes a material misrepresentation. *Brief* at 2-3. In support of the waiver application and appeal, counsel submitted the following documentation: Copies of the applicant’s wife’s naturalization certificate and their children’s birth certificates; an affidavit from the applicant’s wife; photographs of the applicant’s family members; insurance cards and medical records for the applicant’s wife; a psychological evaluation of the applicant’s wife and children; and information on economic, political, and social conditions in the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

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).

The AAO notes that the record contains several references to the hardship that the applicant's children would experience if the applicant is denied admission to the United States. 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 children will not be separately considered, except as it may affect the applicant's spouse.

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 (9th 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 (9th 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. 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 year-old native and citizen of the Philippines who applied for a nonimmigrant visa in Manila, Philippines in October 1997 and provided a false name and other identifying information. He also stated that he was married to a woman residing in the Philippines, when he was in fact already married to his current spouse, who was a Lawful Permanent Resident residing in California at the time. The applicant's wife is a thirty-nine year-old native of the Philippines and citizen of the United States

who resides in Stockton, California with their two U.S. citizen children. The applicant resides in Manila, Philippines.

Counsel asserts that USCIS erred in determining that the applicant's false statements on his nonimmigrant visa application constitute material misrepresentations and states, "he could have qualified for the non-immigrant visa even if he disclosed his true identity, such that he was eligible on the 'true facts.'" *Brief* at 14. The AAO notes, however, that the applicant admitted in a sworn affidavit dated November 29, 1997 that he provided not only a false name, but also willfully concealed his marriage to a Lawful Permanent Resident and stated he was married to a woman residing in the Philippines. Counsel states that the applicant could have qualified for a nonimmigrant visa even if he disclosed his true identity, but fails to address the applicant's concealment of his marriage to a Lawful Permanent Resident residing in the United States and false statement that he had a spouse in the Philippines. Counsel states, "the Embassy presented no evidence that his assumed identity would have affected his eligibility for a visitor's visa, . . . and thus failed to establish that such representation was 'material.'" *Brief* at 3. The applicant bears the burden of establishing that he is eligible to receive the immigration relief sought and is not inadmissible under any provision of this Act. Section 291 of the Act, 8 U.S.C. § 1361. Counsel claims that the applicant's misrepresentation of his identity was not material, but fails to address the misrepresentations concerning his marital status. The AAO finds that the applicant's misrepresentations were material, and that the applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel asserts that since her separation from the applicant, the applicant's wife has become depressed and agitated and is concerned about their two children growing up without a father. Counsel further states that her health had been affected by the separation, and she has sought professional help and therapy. In support of these assertions counsel submitted a psychological evaluation from [REDACTED], who interviewed the applicant's wife and children on January 16, 2006. The evaluation states: "Every member of this single parent family presented for this evaluation with a multitude of psychological problems," and further states that the applicant's wife reports feeling burdened financially and experiencing chest pains, a rash, and other physical ailments. *Psychological Evaluation prepared by [REDACTED] Ph.D.*, dated January 16, 2006. The evaluation states that psychological testing suggests that the applicant's wife is both extremely depressed and highly anxious. *Id.* At 5. The report further concludes that the applicant's daughter, who is shy and has a poor appetite, suffers from a generalized anxiety disorder and their two year-old son suffers from an adjustment disorder with "mixed emotional features." *Id.* [REDACTED] recommends that the applicant's wife be seen by a psychiatrist for an evaluation for depression and anxiety and behavioral therapy to address a fear of driving unrelated to her separation from the applicant as well as seek treatment for her physical ailments, including chest pains and headaches.

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any past diagnosis or history of treatment for any condition such as depression or anxiety. Further, it appears that the applicant's wife had not previously sought treatment for her symptoms before the denial of her husband's waiver application despite having been separated from the applicant since their marriage in 1997, and there is no evidence of any ongoing treatment for any psychological condition. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight

and elaboration commensurate with an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

The evidence does not establish that the difficulties the applicant's wife is experiencing are 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 distress caused by being separated from her husband is not in question, a waiver of inadmissibility is available only 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 exists.

Counsel further asserts that if she relocated to the Philippines, the applicant's wife would face economic, physical, and emotional hardship due to loss of employment, separation from her family members in the United States, lack of adequate medical care for her and her children, and threats to their safety due to terrorist attacks that have occurred throughout the country. Counsel submitted various articles on conditions in the Philippines and also states that the applicant's wife would be forced to give up her nursing job in the United States and would be unable to work in the Philippines. *See Brief* at 7-8. The applicant's wife, who is a registered nurse in the Philippines, further states that if she were allowed to work in the Philippines, she doubts she would find a job with pay comparable to her position in the United States. *See Affidavit of* [REDACTED] dated February 6, 2006. To further support the claim that relocation to the Philippines would cause extreme financial hardship, counsel submitted documentation on the economic situation in the Philippines, including one November 2004 article stating that the unemployment rate was 12.1 percent and an overview of the investment climate published by the U.S. Department of State in 2005 indicating that the unemployment rate had fallen to 10.2 percent that year. No more specific information was submitted to support the assertion that the applicant and his wife would be unable to find employment in the Philippines. The AAO further notes that although she has resided in the United States since 1995, the applicant's wife is a native of the Philippines and a registered nurse, and there is no indication that she does not speak Tagalog or other evidence to support the assertion that she would be unable to find work in the Philippines. Although it appears likely the applicant's family would suffer a decline in their standard of living if they relocated to the Philippines, this is the type of hardship to be expected as a result of deportation or exclusion. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (stating that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (stating that separation of family members and financial difficulties alone do not establish extreme hardship).

Counsel additionally asserts that the applicant's wife would suffer physical hardship because she would not have access to adequate medical care for various conditions, including chest pains requiring medication, severe rashes, and carpal tunnel syndrome. *Brief* at 5. In support of this assertion counsel submitted copies of the applicant's medical records, which state that she sought treatment for intermittent chest pains, allergy symptoms, and numbness in the hand. The documents submitted consist mostly of progress records from various office visits prepared by her doctor, most of which are illegible or unintelligible because they contain abbreviations and medical terminology. The record contains no specific information concerning her medical

condition, such as a letter in plain language from her physician describing the exact nature and severity of her condition, any treatment necessary, and any family assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, no information was submitted concerning access to medical care in the Philippines to support the assertion that the applicant's wife would be unlikely to receive continuing treatment for her conditions there or that she would be unable to afford such care. 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).

Lastly, counsel asserts that the applicant's wife would suffer hardship due to adverse conditions in the Philippines, including terrorist attacks and kidnappings of U.S. citizens. In support of these assertions counsel submitted travel advisories and other information on conditions in the Philippines, including a U.S. Department of State Consular Information Sheet that notes that the crime rate in greater Manila is a serious concern, as it is in many major U.S. cities. Other articles submitted report terrorist activities concentrated largely in the southern areas of Mindanao and the Sulu Archipelago, and the Consular Information Sheet warns against travel to certain areas, including the southern island of Mindanao and the Sulu Archipelago. Most of these warnings discuss possible threats in various locations frequented by tourists and westerners in general. The evidence submitted contains very general warnings of possible terrorist threats in the Philippines, and there is no indication that the applicant's spouse would be in any specific danger if she relocated to the Philippines.

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission to the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The emotional and financial difficulties that the applicant's wife would suffer appear 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 (9th 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 (9th 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 spouse as required under section 212(i) of the Act.

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.