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U.S. Citizenship
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FILE:

Office: MANILA, PHILLIPPINES

Date: AUG 13 2009

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen 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 U.S. citizen spouse, [REDACTED]

The record reflects that the OIC initially denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, on October 16, 2006. On December 12, 2006, the applicant, through his newly retained attorney, filed a motion to reopen/reconsider based upon a claim of ineffective assistance of counsel. On March 16, 2007, the OIC granted the motion, and issued a second decision on the applicant's waiver application. The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. That decision is now before the AAO on appeal.

On appeal, counsel asserts that the applicant's spouse suffers from palpitations, dizziness, fatigue, malaise and headaches as a sign of the stress and anxiety associated with her separation from the applicant. Counsel states that the applicant's spouse is suffering emotionally from her separation from the applicant. Counsel states that the applicant's spouse is suffering from economic hardship in her husband's absence. Counsel states that neither the applicant nor his spouse will be able to earn sufficient income in the Philippines to support themselves. Counsel contends that the OIC's decision fails to consider all relevant hardship factors and does not conduct its analysis of the hardship standard cumulatively. As corroborating evidence, the record contains attestations from the applicant and his spouse, a physician's letter, medical data from the internet, photographs, printouts of e-mail exchanges between the applicant and his spouse, and financial and employment records. The entire record was reviewed and 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.

The record reflects that on March 24, 2001, the applicant applied for admission into the United States with a B1/B2 visitor visa. During secondary inspection, the applicant admitted that he was entering the United States to work and reside with his sister. The applicant withdrew his application for admission and returned to the Philippines. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States by misrepresentation. The applicant does not contest this finding of inadmissibility.

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 the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

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).

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.

The applicant's spouse asserts in her declaration, dated December 4, 2006, that she suffers from heart palpitations, anxiety and stress every couple of months because of her separation from the applicant. She states that she is severely incapacitated during those periods, and stays in bed. She states that she

is suffering from asthma and back pains. She states that she uses an inhaler for asthma and has physical therapy for back pain. She states that her back pain is brought on by the stress and emotional turmoil from her husband's absence. She states that she is depressed due to her separation from the applicant. She states that her depression includes trouble sleeping, being short tempered, and change in eating habits. The applicant asserts in his September 5, 2006 affidavit, initially filed with the waiver application, that his spouse's apprehension has disrupted her hospital work schedule and has negatively affected her job performance. As corroborating evidence, counsel furnished a letter from [REDACTED], dated December 5, 2006, which states that the applicant's spouse is suffering a significant amount of stress as a result of being separated from her husband for the last four years. [REDACTED] states that the applicant's spouse complains of palpitations, dizziness, fatigue, malaise and headaches, which he believes are related to stress, and anxiety and apprehension due to their separation.

The AAO finds that the record fails to reflect any type of assessment or evaluation of the applicant's mental health by a licensed mental health professional. The record does not reflect that [REDACTED] diagnoses have been made with the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering his findings speculative. There is no documentation in the record related to the applicant's diagnoses, prognoses, and treatment for anxiety and depression by a licensed mental health professional. Moreover, the record does not contain any medical records related to the applicant's spouse's treatment for asthma and back pain. 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)). Further, documentation in the record reflects that the applicant's spouse has received several awards and an outstanding evaluation for her job performance. There is nothing in the record to demonstrate that she is suffering from medical conditions that have negatively impacted her employment. For these reasons, the AAO cannot conclude that the applicant's spouse has medical conditions that contribute to a finding of extreme hardship.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not, in combination with other hardship factors in the record, rise to the level of extreme hardship. Rather, the record demonstrates that she is facing no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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, exist. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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).

The applicant's spouse asserts that the applicant suffers from allergies in the Philippines, and needs her assistance for medical visits because they are expensive and he does not have insurance. She states that if she moves to the Philippines both she and the applicant will be unemployed and unable to afford the cost of their medical care. She states that she is struggling to support two households in the United States and the Philippines. She states that she is a registered nurse and earns from \$54,000 to \$55,000 per year. She states that with this income she pays her mortgage, credit card bills, phone bills, utility bills. She states that she sends money to the applicant every month for his housing and expenses. She indicates that she has taken a loan, which has contributed to her expenses. She states that she needs the applicant in the United States to help her financially. She states that the applicant is attending school to become a registered nurse. She notes that she does not believe the applicant will be able to find employment as a registered nurse in the Philippines once he passes his exam. She states that because of her situation she cannot obtain her Master's Degree. As corroborating evidence, counsel furnished documentation of the applicant's spouse's telephone bills, bank accounts and loan, remittances to the applicant, 2005 Form W-2 and tax return, and employment related awards and evaluations.

The AAO will consider financial hardship as a factor in contributing to a finding of extreme hardship. However, in the present case, the claim of financial hardship is not demonstrated by the record. The AAO notes first that the applicant's spouse's tax return shows that she earned \$58,299 in 2005, which is far beyond the U.S. Department of Health and Human Service's 2005 federal poverty guidelines. The Department of Health and Human Service's 2005 federal poverty guidelines reflect that an annual income of less than \$9,570 constitutes poverty, thus allowing for financial eligibility for certain federal program purposes.¹ Second, the applicant's immigrant visa application (Form DS-230 Part 1) reflects that he has been employed by Southland Realty as a real estate broker since January 1994. There is no indication in the record of the reason the applicant is no longer employed or seeking employment as a real estate broker. Presumably, the applicant was able to financially support himself as a real estate broker prior to his marriage to the applicant. Third, the applicant's spouse's decision to support the applicant to allow him to attend school is a self-imposed financial hardship as there is no indication that the applicant would not be able to resume his career as a real estate broker had he not enrolled in nursing school. Fourth, in regard to the applicant's spouse's employability in the Philippines, she has not demonstrated that she has researched employment opportunities in the Philippines for an individual with her education, background and skills. It should be noted that as a former native of the Philippines, she would return to the country without any significant linguistic and cultural barriers. Finally, the applicant's spouse's assertion that she has delayed entering a program for her Master's Degree because she cannot afford to take classes and limit her employment hours, is not necessary an indication of extreme hardship, but evidence of an inconvenience that has arisen due to the applicant's inadmissibility. In *Shoostary v. INS*, the Ninth Circuit Court of Appeals noted that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." 39 F.3d 1049, 1051 (9th Cir. 1994).

¹ <http://aspe.hhs.gov/POVERTY/05poverty.shtml>

Finally, the applicant's spouse asserts that she fears for the applicant's safety in the Philippines. She states that the country has criminal problems, and she does not want the applicant to be harmed. She contends that she wants to start a family with the applicant. She states that she is in her mid-forties and does not know how much time she will continue to be able to conceive. She states that she wants the applicant to be admitted to the United States to have a family with him. It should be noted that the applicant has made similar assertions regarding the desire to have children in his September 5, 2006 affidavit that was initially filed with the waiver application.

The AAO finds that the applicant's spouse has not demonstrated the hardship she would suffer if she returned to the Philippines to start a family with the applicant. She claims that there economic reasons for her decision to reside in the United States. However, she also claims that she has incurred significant expenses from remaining in the United States and supporting a household in the Philippines. She indicates that she would not find employment in the Philippines. This claim is based in speculation alone, as there is no documentary evidence that she has attempted to find employment or research employment opportunities in the Philippines. Similarly, her claims related to crime in the Philippines are unsubstantiated by the record. She has not furnished country conditions reports or any detailed information related to the level of violence, its location, and the individuals targeted by criminal organizations. There is no indication that her husband has ever been the target of crime in the Philippines. Nor is there any indication that crime has caused him to significantly alter his lifestyle and activities. Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship if she relocated to the Philippines.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *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.