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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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[redacted]

FILE: Office: MANILA, PHILIPPINES Date: JUL 14 2009

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 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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Shumway

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 procured admission into the United States by fraud or willful misrepresentation in 1998. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The OIC concluded that the applicant failed to show that her U.S. citizen spouse would suffer extreme hardship as a result of her continued inadmissibility. The application was denied accordingly. *Decision of the OIC*, dated March 26, 2007.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred as a matter of fact and law in denying the applicant's waiver application. *Form I-290B*, dated April 3, 2007. Counsel states that USCIS impermissibly defined extreme hardship as great actual or prospective hardship, and failed to consider the emotional and economic hardship separation would cause. Counsel also states that USCIS engaged in impermissible speculation as to why the applicant and her spouse are trying to have a child and engaged in applying a heightened standard of analysis in requiring formal medical diagnoses and failing to consider treatable hardship as a hardship.

The record indicates that in 1998 the applicant presented a fraudulent birth certificate while applying for a nonimmigrant tourist visa.

Counsel asserts that the applicant is not inadmissible for misrepresenting a material fact because she gave a timely retraction of her misrepresentation, stating that as soon as the applicant learned of the falsified document she timely retracted the misrepresentation and thus, it should be removed from consideration. *Counsel's Brief*, dated May 31, 2007.

The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. Stated in part; ... (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case. *DOS Foreign Affairs Manual*, § 40.63 N4.1-N.46.

The AAO notes that in the applicant's supplement to her Form I-601 waiver application she states that, "...when the embassy found out the misrepresentation, I immediately and voluntarily admitted the truth." *Supplement to Form I-601*, dated October 27, 2006. The AAO finds that admitting to the fraudulent nature of a document after that document has been presented as evidence and then has been found to be false does not constitute a timely retraction of a misrepresentation. Thus, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

> 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).

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 extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel states that USCIS failed to give any consideration to the hardship caused by family separation, including emotional hardship and the fact that the applicant has no other means of immigrating to the United States. *Counsel's Brief*, dated May 31, 2007. The applicant's spouse states that he has been through three prior marriages that have all ended in divorce and that he is lonely and sad. *Supplement to Form I-601*, dated October 27, 2006. The applicant's spouse also states that the applicant and his spouse dated for three years before getting married on February 9, 2005 in the Philippines. *Spouse's Statement*, undated. He states that since then he has visited his wife ten times and has been diagnosed with separation anxiety and panic disorder. He states that living this way is very expensive and that his bills are piling up from communicating and visiting the applicant. He states that the long distance relationship is causing him to be constantly nervous and afraid. He states that he needs to take sleeping pills and that not being able to fulfill his marriage obligation of having a child would be irreparable, where losing his job and ability to maintain his creditworthiness would be disastrous.

The AAO notes that the supporting documentation in the record includes copies of flight tickets and itineraries for travel to the Philippines, copies of the applicant's spouse's passport showing entry and exit stamps from the Philippines, copies of hotel and car rental receipts showing travel to the Philippines, copies of statements showing phone calls to the Philippines, copies of e-mails from the applicant's spouse to the applicant, copies of checks made payable to the applicant from the applicant's spouse, copies of money transfers from the applicant's spouse to the applicant and a letter confirming the applicant's spouse's employment in the United States.

The record contains copies of prescriptions from the Philippine Obstetrical and Gynecological Society listing the applicant as the patient and results from lab tests showing that the applicant has a cyst on her left ovary and inflammation. The prescriptions are illegible and the record does not contain a letter or statement from the applicant's treating doctor explaining the applicant's problems and her need for medication and/or lab tests. Without such documentation, the documents submitted have little probative value in this proceeding.

The record also contains copies of a prescription from [redacted] dated October 23, 2006 for the applicant's spouse for Xanax and Zoloft to be taken once a day. *Prescription from* [redacted], dated October 23, 2006.

The AAO notes that although the record shows that the applicant's spouse is currently traveling frequently to the Philippines, communicating with the applicant often and sending her money in the

Philippines, it does not establish that he is experiencing extreme hardship as a result of her inadmissibility to the United States. The record shows that the applicant's spouse is prescribed Xanax and Zoloft, but does not substantiate the claims made by the applicant's spouse as to why he needs these prescriptions and that the need for these prescriptions has been either brought on or has been exacerbated by the applicant's current immigration problems. Moreover, the record fails to address the possibility of the applicant's spouse relocating to the Philippines to be with the applicant and whether this relocation will cause extreme hardship for the applicant's spouse.

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)).

U.S. court decisions have repeatedly 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS*, *supra,* held further 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 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.