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U.S. Citizenship  
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Services

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MAY 06 2009

FILE:

Office: CHICAGO, ILLINOIS

Date:

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, 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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having entered the United States through fraud or the willful misrepresentation of a material fact. The applicant is the husband of a U.S. citizen and father of two U.S. citizen children, and seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, or that a favorable exercise of discretion was warranted, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601).

On appeal, counsel asserts that the applicant's U.S. citizen spouse will suffer extreme hardship because of the financial, emotional and family burdens that would fall on her if the applicant were excluded from the United States.<sup>1</sup>

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as set forth in section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 . . . .

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<sup>1</sup> Although counsel states on appeal that the applicant is appealing the denial of her Form I-485, Application to Register Permanent Residence or Adjust Status, as well as the denial of her waiver application, the AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). Therefore, the AAO will consider only the denial of the applicant's waiver application.

The record indicates that the applicant used a passport with a false identity to enter the United States on May 26, 1995. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act for having entered the United States by fraud or willfully misrepresenting a material fact. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case, the lawful permanent resident father of the applicant. Hardship to non-qualifying relatives is not directly relevant to a determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant’s waiver request.

The record of proceeding contains the following relevant evidence:

1. Employment letters verifying the applicant’s and the applicant’s spouse’s employment in the health care industry as a surgical technician and registered nurse, respectively.
2. Pay stubs, bank statements and tax records for the applicant’s spouse, establishing her annual income.
3. Copies of utilities invoices, mortgage statements, insurance and other billings, as well as a monthly breakdown of the applicant’s spouse’s monthly household expenses.

4. Birth, naturalization and marriage certificates for the applicant, the applicant's spouse and their children.
5. Medical records for the applicant's son, indicating that he required surgery on one of his fingers in 2006.
6. A handwritten note from a doctor at the DuPage Medical group stating the applicant's wife had an ovarian cyst removed.
7. Statements from the applicant expressing remorse for his use of a false identity to enter the United States and asserting that he and his wife need one another in order to raise their children.
8. Statement from the applicant's spouse

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant asserts that if he were excluded the burden of raising their two children would result in extreme hardship on his spouse, and details their daily routine. He also states that due to her medical conditions she might be required to undergo a hysterectomy or embolization in the future. While the AAO acknowledges the applicant's statements, it notes that the record does not contain documentary evidence to establish the applicant's spouse's medical conditions or how they would affect her ability to meet her daily responsibilities. The AAO also acknowledges the additional burdens that would be placed on the applicant's if she were required to raise her children alone. Again, however, the record does not provide the documentation necessary to establish that the hardship imposed by these burdens would rise above that normally experienced by the relatives of excluded aliens. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

Counsel states that the applicant has lived in the United States for an extended length of time, and that the applicant's family has acculturated to the United States. Counsel further asserts the applicant's exclusion would result in significant psychological hardship to the applicant's children due to the close knit structure of their family, hardship above the normal disruption of social and community ties involved with deportation. The AAO acknowledges that the applicant's family will have to make adjustments if the applicant is removed, but it also notes that children are not qualifying relatives in section 212(i) waiver proceedings. The impact on non-qualifying relatives is not directly relevant to a determination of extreme hardship, except as it impacts a qualifying relative, in this case the applicant's wife. While the AAO accepts that raising two children alone would be a burden on the applicant's spouse, the record does not contain evidence, e.g. an evaluation by a licensed mental health professional, that establishes how the applicant's children's reaction to his absence would affect their mother. In the absence of such documentation, counsel's assertions do not constitute evidence and are not persuasive. *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 also states that the Philippines is a poor country and that the applicant's employment prospects and opportunities would differ vastly from those in the United States, and points to the U.S. Department of State Country Reports on Human Rights Practices – 1997, which indicates an unequal distribution of income in the Philippines. However, the record contains no documentary

evidence to establish that the applicant would not be able to find employment in the Philippines, e.g. published country conditions reports on the Philippines economy. Moreover, the inability to maintain the same standard of living or pursue a chosen profession does not establish extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). Counsel contends that the applicant's spouse will suffer financially if the applicant is excluded, but evidence in the record shows that her income far exceeds the federal poverty guidelines for a family of three. Moreover, the record, as just discussed, does not establish that the applicant would be unable to obtain employment in the Philippines and assist his family financially from outside the United States. The AAO also notes that economic detriment alone does not rise to the level of extreme. *Matter of Ige*, 20 I&N 880 (BIA 1994).

Based on its review of the record, the AAO does not find the above factors, individually or in the aggregate, to establish that the applicant's spouse will suffer extreme hardship if the applicant is excluded and she chooses to remain in the United States.

As previously noted, extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel for the applicant asserts that the applicant's spouse and children will suffer hardship upon relocation as they have assimilated to the United States. However, the applicant's children are not qualifying relatives, and any impact on them is only indirectly related to a determination of extreme hardship. As the record does not address how the children's hardship would affect their mother, it will not be considered in this proceeding. The AAO observes that the record also fails to document what specific hardships the applicant's spouse would suffer as a result of her assimilation to the United States if she relocates to the Philippines. 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). The AAO further notes that both the applicant and his spouse are Filipino natives and both have family residing in the Philippines.

Counsel has also asserted that the economic conditions in the Philippines are such that the family would not be able to maintain its standard of living. However, as previously discussed, counsel has submitted no evidence to support his assertion that the applicant and his spouse would not be able to find commensurate employment if they were to relocate to the Philippines. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Id.* As such, the record does not support the assertion that the applicant's spouse would experience extreme hardship if she were to relocate to the Philippines with the applicant.

The record, viewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if he is refused admission. The record fails to distinguish his hardship from that normally associated with removal. Accordingly, it does not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the applicant has failed to establish extreme hardship to his U.S. citizen spouse. As the applicant is 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 rests 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.