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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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FILE:

Office: SAN FRANCISCO

Date:

OCT 20 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having procured admission to the United States through fraud or misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The field office director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the Field Office Director* dated June 7, 2007.

On appeal, counsel for the applicant asserts that both the applicant's husband and her mother-in-law who resides with them would suffer extreme hardship if the applicant is removed from the United States, and that the hardship to the applicant's mother-in-law would have a direct impact on the applicant's husband. *Brief in Support of Appeal* at 7. Counsel asserts that the applicant's husband would suffer psychological and financial hardship if he remained in the United States without the applicant because he and his family members rely on the applicant's income to help meet their financial obligations and because of the emotional and psychological impact of separation from the applicant on her husband. *Brief* at 4. Further, counsel states that the applicant's mother is in poor health and relies on the applicant to take care of her. *Brief* at 4. Counsel contends that the applicant's husband would suffer extreme hardship if he relocated to the Philippines because of his family ties in the United States and lack of ties to the Philippines, poor economic conditions in the Philippines as well as the presence of dangerous extremist groups there, and the emotional effects of relocation to a foreign country in light of his psychological condition. *Brief* at 3-5. In support of the appeal counsel submitted declarations from the applicant's husband and mother-in-law and a psychological evaluation of the applicant's husband. Documentation submitted with the waiver application includes a declaration from the applicant's husband, a psychological evaluation of the applicant's husband, pay stubs for the applicant and her husband, copies of bills and credit card statements and a list of their expenses, documentation of health insurance for the applicant and her husband, and information on 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).

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. In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.)

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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. 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.

In the present case, the record reflects that the applicant is a thirty-one year-old native and citizen of the Philippines who has resided in the United States since October 12, 1997, when she entered using a fraudulent Philippine passport and U.S. visa issued in the name [REDACTED]. The applicant married her husband, a forty year-old native and citizen of the United States, on May 28, 2004. They reside Antioch, California with the applicant's mother-in-law and brother-in-law.

Counsel asserts that the applicant's husband would suffer extreme hardship if he relocated to the Philippines because he would be separated from his family members in the United States and because he does not speak Tagalog and would have no family there aside from the applicant. *Brief* at 3-4. Counsel additionally asserts that he would suffer hardship due to economic and social conditions and the threats posed by extremist and terrorist groups. A declaration from the applicant's mother-in-law states that the applicant and her husband reside in her home and provide her with financial and emotional support and also assist her with daily activities since she has undergone surgery for various medical conditions. *Declaration of* [REDACTED] dated June 28, 2007. She further states that as a family they keep the household together and pull together everything they need and that she fears that without the continued help of her son and the applicant she would have to live in a nursing home. *Declaration of* [REDACTED]

The applicant's husband has resided in the United States his entire life and has never been to the Philippines. He has close family ties in the United States and lives with his mother and brother. Additional documentation on the record indicates that economic conditions are poor in the Philippines, unemployment and underemployment are high, and the government encourages Filipino citizens to go abroad to seek employment. Under these circumstances, it appears that the applicant's husband, who does not speak Tagalog and has no ties to the Philippines, would have difficulty finding employment there. The AAO further notes that the U.S. Department of State has issued a warning against travel to certain parts of the Philippines and further warns that "U.S. Citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those due to terrorism." See U.S. Department of State, Bureau of Consular Affairs, *Philippines – Country Specific Information*, updated February 6, 2009. The Bureau of Consular Affairs further states,

While travelers may encounter such threats anywhere in the Philippines, the southern island of Mindanao and the Sulu Archipelago are of particular concern. Travelers should exercise extreme caution in both central and western Mindanao as well as in the Sulu Archipelago. For further information regarding the continuing threats due to terrorist and insurgent activities in the southern Philippines, see the Philippine Travel Warning.

Terrorist groups, such as the Abu Sayyaf Group, the Jema'ah Islamiyah and groups that have broken away from the more mainstream Moro Islamic Liberation Front or Moro National Liberation Front, have carried out bombings resulting in deaths, injuries and property damage. In November 2007, a bombing outside the House of Representatives in Metro Manila resulted in a number of deaths and injuries to

bystanders. . . . While those responsible do not appear to have targeted foreigners, travelers should remain vigilant and avoid congregating in public areas Kidnap-for-ransom gangs operate in the Philippines and sometimes target foreigners, as well as Filipino-Americans. The New People's Army (NPA), a terrorist organization, operates in many rural areas of the Philippines, including in the northern island of Luzon. While it has not targeted foreigners in several years, the NPA could threaten U.S. citizens engaged in business or property management activities, and it often demands "revolutionary taxes."

The AAO finds that the evidence on the record, when considered in the aggregate, establishes that the emotional and physical hardships that would result from relocating to the Philippines and having to adjust to the language, culture, and economic and social conditions there after residing in the United States for his entire life would rise to the level of extreme hardship for the applicant's husband. The record establishes that the applicant's husband is not a native Tagalog speaker and that he has family ties in the United States and no ties to the Philippines. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). The hardship caused by severing his ties to the United States, having to adapt to an unfamiliar culture, and seeking employment without knowledge of the native language, combined with the threat of terrorist groups that may target U.S. Citizens, would amount to extreme hardship for the applicant's husband if he were to relocate to the Philippines.

Counsel asserts that the applicant's husband suffers from depression and that both he and his mother would suffer emotional and financial hardship if the applicant were removed from the United States. The record contains two psychological evaluations for the applicant's husband, one submitted with the waiver application and a follow-up evaluation conducted after the waiver application was denied. The first evaluation states that the applicant's husband was suffering from an Adjustment Disorder with Mixed Anxiety and Depressed Mood due to stress related to his wife's immigration status and recommends that she be allowed to remain in the United States "to maintain the marriage and the strong emotional bond with her husband." *Psychological Evaluation of* [REDACTED] [REDACTED] dated October 15, 2006. A subsequent evaluation conducted after the waiver application was denied concludes that the symptoms have increased due to "the prolonged stressor he continues to experience" and that he is now suffering from a Major Depressive Disorder, moderate. *Psychological Evaluation of* [REDACTED] [REDACTED] dated July 2, 2007. The second evaluation recommends that the applicant be allowed to remain in the United States to relieve his stress and reduce his symptoms, and does not recommend any treatment or counseling. *Psychological Evaluation of* [REDACTED] [REDACTED] dated July 2, 2007.

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 psychological evaluation of the applicant's husband, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for depression or anxiety. The conclusions reached in the submitted evaluation, being based two separate interviews conducted in September 2006 and July 2007, do not reflect the insight

that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluations' value to a determination of extreme hardship. Further, there is no evidence submitted that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of an adjustment disorder and subsequent diagnosis of a major depressive disorder.

Counsel asserts that the applicant's husband is suffering emotional hardship due to fears he will be separated from the applicant. As noted above, the record is insufficient to establish that any emotional difficulties he is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's exclusion or removal. Although the depth of his distress caused by the prospect of separation from his wife 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 additionally asserts that the applicant would be unable to care for his mother without the applicant, and she would likely end up in a nursing home if the applicant were to depart the United States. The applicant's mother-in-law states that she has undergone knee replacement in both knees and has had a stent placed in her heart to relieve constant angina and cannot get around like she used to since the surgeries. *Declaration of [REDACTED]* She further states that the applicant provides her with assistance such as cooking meals and bathing her and she fears she would have to go to a nursing home if the applicant departed the United States. The emotional effects of significant conditions of health of a close family member on a qualifying relative are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's mother-in-law suffers from such a medical condition such that the applicant's husband would suffer from emotional hardship if the applicant departed. The record contains no medical evidence to support the assertions concerning the medical condition of the applicant's mother-in-law. 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 husband asserts that he would suffer financial hardship if the applicant were removed from the United States because he relies on her steady income to maintain their household while he works primarily as a musician with several jobs, including work as an audio technician, to supplement his income. *See Declaration of [REDACTED]* dated November 3, 2006. He further states that he would suffer hardship because he would have to send money to the applicant in the Philippines, where she would have difficulty finding employment, and would have to take time off from work to visit the applicant there. *Declaration of [REDACTED]* dated November 3, 2006. The record contains no evidence of unusual circumstances that would prevent the applicant's husband from working and supporting himself financially. Although having to live without the applicant's

income, send money to her in the Philippines, and travel to the Philippines would likely have a negative effect on the financial situation of the applicants' husband, the evidence on the record is insufficient to establish that the financial impact would rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

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 and he remains in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. U.S. court decisions have repeatedly held that the common results of removal 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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.