

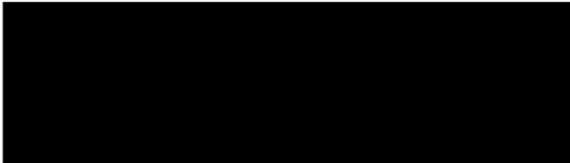
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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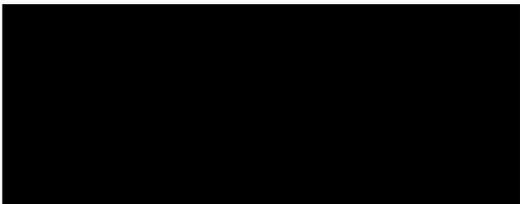
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FILE: [REDACTED] Office: SAN FRANCISCO Date: SEP 24 2009

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 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.

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, San Francisco, California, and an appeal to the Administrative Appeals Office (AAO) was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision affirmed and the waiver application denied.

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 a nonimmigrant visa and admission to the United States 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. She 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 husband and children.

The district director 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 District Director* dated March 3, 2004. The AAO also concluded that the applicant failed to establish extreme hardship and dismissed an appeal of the district director's decision. *See Decision of the AAO* dated November 21, 2006.

In the motion, counsel states that new evidence has developed since the waiver application was filed that establishes extreme hardship to the applicant's husband if the waiver is not granted. *See Motion to Reopen and/or Reconsider* at 2. Counsel further asserts that Citizenship and Immigration Services ("USCIS") erred by concluding that a psychological evaluation submitted with the waiver application was "worthless" because it was based on a single interview and by citing cases that may no longer be applicable or involve circumstances distinguishable from the applicant's case. *Motion* at 3. In support of the motion to reopen and/or reconsider, counsel submitted documents related to the businesses owned by the applicant's husband and income tax returns. The entire record was reviewed and considered before rendering a decision in this matter.

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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. 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 and mother are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse or mother.

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.

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.

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding

to the BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

The record reflects that the applicant is a thirty-eight year-old native and citizen of the Philippines who applied for a nonimmigrant visa in Manila, Philippines in 1995 and stated on her visa application that she had no relatives in the United States though her mother was a lawful permanent resident who had been residing in the United States since 1981. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for obtaining a visa and admission to the United States through willful misrepresentation of a material fact. The record further reflects that the applicant married her husband, a thirty-six year-old native of the Philippines and citizen of the United States, on August 26, 1997 in Reno, Nevada. The applicant resides with her husband and children in Vallejo, California.

Counsel asserts that the applicant’s husband would experience extreme hardship if he returned to the Philippines because he owns two businesses and submitted evidence of these businesses that was not available when the waiver application was filed. Counsel states that the applicant’s husband would lose these businesses, resulting in financial hardship, if he were to relocate to the Philippines and further contends that the AAO erred in considering only his business ties and not other factors when evaluating the claim of extreme hardship. *See Motion* at 3. Counsel asserts that the applicant’s husband would suffer hardship if he departed the United States due to his length of residence in the country, economic and social conditions in the Philippines, and his strong family ties in the United States, including his parents, brother, sister. Counsel additionally claims that although the applicant’s minor children are not qualifying relatives, the fact that they have lived their entire lives in the United States and would have difficulty adapting to life in the Philippines would contribute to the hardship experienced by the applicant’s husband. *See Motion* at 4.

Counsel claims that the applicant’s husband would suffer financial hardship if he relocated to the Philippines because he would have to abandon his businesses, from which he earns a substantial income, and would not be able to pay the mortgages on his two homes in Northern California. Counsel submitted business and real estate licenses for the applicant’s husband and New Generation Realty & Loan and income tax returns and wage reports for the applicant and her husband and their business. The income tax returns indicate that the applicant and her husband reported an income of \$956,353 in 2005 and \$636,561 in 2004. A significant portion of this income was earned through the businesses owned by the applicant and her husband and the rest through wages paid to both the applicant and her husband by the company.

The record further indicates that the applicant’s husband has resided in the United States since about 1989, when he was sixteen years old, and became a naturalized citizen in 1997. *See Affidavit of* [REDACTED] dated August 11, 2003. The applicant’s husband’s immediate family members, his parents and a brother and sister, are all U.S. Citizens who have lived in the United States for more than 20 years. It appears that the financial hardship that would result from having to sell or abandon his businesses and property in the United States and the difficulty of readjusting to conditions and finding employment in the Philippines after twenty years of residence in the United States would amount to extreme hardship. The AAO further notes that relocation to the Philippines would cause

the applicant's husband to sever his family ties in the United States, and, 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).

Counsel further asserts that the applicant's husband is suffering emotional hardship due to the prospect of being separated from the applicant, and submitted with the waiver application a psychological evaluation from [REDACTED], who interviewed the applicant's husband on August 15, 2003. The evaluation contains an overview of how the applicant met her husband and their life in the United States. It states that the applicant's husband has experienced symptoms of depression and anxiety, including sadness, loss of appetite, and suicidal thoughts since learning that the applicant may not be granted permanent residence and he might be separated from her. See *Evaluation from [REDACTED]* dated August 15, 2003, at 2-3. [REDACTED] concludes that the applicant's husband is suffering from a Major Depression Disorder, severe, recurrent, with psychotic features and recommends follow-up treatment. See *Evaluation from [REDACTED]* at 10-12.

As stated in the decision of the AAO dismissing the applicant's appeal, the input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. Counsel claims that the AAO concluded that the psychological evaluation submitted with the appeal was "literally worthless" because it was based on a single interview, and further contends that an expert opinion cannot be discredited or discounted because it was done in one visit. *Brief* at 9. Counsel states that by noting that the documentation shows no evidence of follow-up treatment, a "requirement that the qualifying relatives must undergo intensive treatment until cured" is implied in the decision. *Brief* at 9-10. The decision of the AAO does not indicate that the evaluation conducted by [REDACTED] is considered worthless, but rather finds that because it is based on a single clinical interview, it fails to reflect an ongoing relationship between the mental health professional and the applicant's husband, which diminishes its value to a determination of extreme hardship.

The decision of the AAO further notes that although [REDACTED] recommended further treatment from a mental health professional and possibly medication for the condition, no evidence was submitted that any follow-up appointment took place. The applicant submitted an appeal of the denial of the waiver application in March 2004 and a motion to reopen and reconsider the AAO decision in December 2006, with which additional evidence concerning other aspects of the hardship claim was submitted. At no time was any evidence submitted establishing that the applicant's husband sought any follow-up treatment for his psychological condition, despite his reports that he was contemplating suicide, the diagnosis of major depression with psychotic feature, and the recommendation of the psychologist conducting the evaluation that he seek further treatment. The lack of further contact with a mental health professional since 2003, despite the serious nature of the diagnosis and the specific recommendations of [REDACTED] in the "Treatment Plan" section of the evaluation, undermines the reliability of the findings made in the evaluation.

The evidence on the record is insufficient to establish that the difficulties the applicant's husband is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the his spouse's deportation or exclusion. Although the depth of his distress caused

by the prospect of being separated 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’s husband would suffer extreme hardship because of hardships his children would experience if the waiver application is denied. *Motion* at 5-7. Counsel cites several decisions of the U.S. Court of Appeals for the Ninth Circuit as well as decisions of the Board of Immigration Appeals, but it is noted that these decisions refer to hardship to children who were qualifying relatives, and in the present case the applicant’s children are not qualifying relatives. The applicant’s husband states that he cannot be mother and father to his children while he is the sole breadwinner for the family and it would be tragic for the children to be deprived of their mother. *See Affidavit of* [REDACTED] dated August 11, 2003. In his affidavit the applicant’s husband does not specify whether the children would remain in the United States with him or relocate to the Philippines with the applicant, but he makes several claims about hardships they would face in the Philippines. He states that their health may be affected by the climate there, they do not speak the language spoken there, he would not be able to afford medical insurance, they would be targeted for kidnapping, and he would be unable to afford a suitable school for them.

As noted above, the applicant and her husband earned a net income of \$956,353 in 2005 and \$636,561 in 2004, and wage reports indicate that there are several individuals employed by their company in addition to the applicant and her husband. There is no evidence that the applicant’s husband would be unable to operate this business without the applicant, or that he would be unable to afford schools or medical coverage for his children if they moved to the Philippines with the applicant. There is no indication that the applicant’s children would be targeted for kidnapping as the applicant’s husband claims, or that there are any special circumstances such as a significant medical condition that would jeopardize their health if they relocated there. Any hardship to the applicant’s children cannot be separately considered since they are not qualifying relatives, and the record is insufficient to establish that the applicant’s husband is suffering or would suffer from extreme emotional hardship due to hardship experienced by the children if he remained in the United States with them or if they relocated to the Philippines with the applicant.

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 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. The emotional and financial difficulties that the applicant’s husband 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 her 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.

ORDER: The motion is granted. The waiver application is denied.