

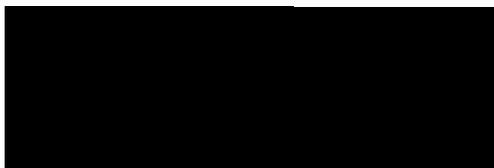
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



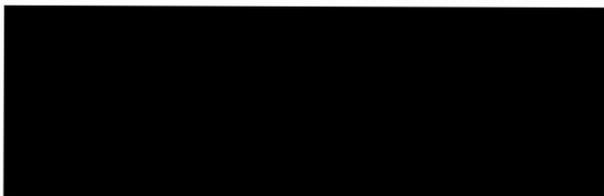
H2

FILE: [REDACTED] Office: LOS ANGELES Date: SEP 30 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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, 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 sought to procure admission to the United States with a nonimmigrant visa through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 his spouse.

The field office 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 Field Office Director* dated May 16, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“USCIS”) abused its discretion in determining that the applicant had not established extreme hardship to his wife if he is denied admission to the United States. Specifically, counsel claims that USCIS failed to take into account the hardship to the applicant’s five U.S. Citizen children and the effects of this hardship on the applicant’s wife. *See Brief in Support of Appeal* at 2-3. Counsel further maintains that USCIS failed to consider evidence of hardship due to the applicant’s wife’s medical condition or the effects on her health that would result from raising her children on her own without the applicant’s income or support. *Brief* at 4. Counsel contends that USCIS misapplied decisions of the Board of Immigration Appeals (BIA) and courts and failed to consider the hardship factors in the aggregate. *Brief* at 4-5. In support of the waiver application and appeal, counsel submitted statements from the applicant’s wife, letters from the applicant’s wife’s physician, letters from the applicant’s employer and his wife’s employer, income tax returns for the applicant and his wife, copies of family photographs, and financial documentation. 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.

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 is the only qualifying relative 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.

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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

The record reflects that the applicant is a thirty-nine year-old native and citizen of the Philippines who last entered the United States without inspection in March 1995. He had previously sought admission using a fraudulent Filipino passport and U.S. visa on May 11, 1994 and was found to be inadmissible under section 212(a)(6)(C)(i) of the Act and removed from the United States on June 22, 1994. The record further reflects that the applicant married his wife, a thirty-five year-old native

of the Philippines and citizen of the United States, on December 14, 2002. The applicant resides with his wife and children in Torrance, California.

Counsel asserts that the applicant's wife would experience hardship if she remained in the United States because she suffers from medical conditions that would be exacerbated by the "stress and aggravation that would be inflicted on her from having to raise five children on her own." *Brief* at 4. Counsel states that the applicant's wife is overweight and diabetic and has a family history of diabetes, but submitted no medical evidence to support this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. 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). Further, the claim that the applicant's wife suffers from diabetes is not supported by his wife's affidavit, in which she states, "My family had a history of diabetes. At my age, I am already overweight." *Affidavit of* [REDACTED] dated August 1, 2006.

Counsel further asserts that the applicant's wife would suffer financial hardship due to loss of the applicant's income and states that her health would be compromised if she had to raise five children on her "meager earning power." *Brief* at 4. The applicant's wife states in her affidavit that she will have difficulty raising the children and paying the bills by herself because the applicant is now taking care of these matters, and further states that she is not employed because she has to take care of so many young children. *Affidavit of* [REDACTED] Letters submitted with the applicant's wife's affidavit of support indicate that she was employed as a certified nursing assistant, and there is no evidence that she would be unable to find employment and support herself and the family if he departs the United States. *See letters from Earlwood Nursing Facility* dated November 3, 2004 and July 5, 2005. Although the loss of the applicant's income is likely to have a negative impact on the financial situation of the applicant's wife, the U.S. Supreme Court 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. The loss of the applicant's income and potential decline in standard of living is the type of hardship to be expected as a result of deportation or exclusion.

The applicant's wife states that it would be severe hardship for her to be separated from the applicant because they are very close to each other and "permanent separation would result in extreme psychological and emotional hardship" for both of them. *Affidavit of* [REDACTED]. She further states that it would be heartbreaking for her to see her children "longing for their father." She further states that she has had difficulty sleeping and finds herself crying out of fear the applicant will be removed from the United States. *Affidavit of* [REDACTED] The applicant's wife states that she will suffer emotional and psychological hardship if the applicant departs the United States, but no evidence was submitted concerning her mental health or the potential psychological effect of separation from the applicant. The evidence does not establish that the difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from her husband 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.

The applicant’s wife states that she would suffer extreme hardship if she relocated to the Philippines with the applicant because it would be difficult for her and the applicant to find jobs because of their age and economic conditions in the Philippines. *Affidavit of* [REDACTED] She further states that if they did find jobs, their income would be meager and they would not be able to give their children a good future. *Affidavit of* [REDACTED] She states that she would also suffer because she would be permanently separated from her five siblings in the United States. Counsel did not submit any evidence to support these assertions, such as information on conditions in the Philippines or information on the applicant’s wife’s relatives in the United States, including where they reside and how much time they spend with the applicant’s family. 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 AAO further notes that although she has resided in the United States for several years, the applicant’s wife is a native of the Philippines and there is no indication that she does not speak Tagalog or other evidence to support an assertion that she would be unable to adjust to life in the Philippines. Although it appears likely the applicant’s family would suffer a decline in their standard of living if they relocated to the Philippines, this is the type of hardship to be expected as a result of deportation or exclusion. See *INS v. Jong Ha Wang, supra*.

The applicant’s wife additionally states that she fears that they would not have access to adequate medical care in the Philippines and she believes her health and that of her children would be jeopardized and her children would suffer because of the humid climate there. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. As noted above, no medical evidence was submitted to support assertions concerning the health of the applicant’s wife, and the record does not establish that the applicant’s wife or children suffer from any serious medical condition. Further, no evidence was submitted concerning conditions in the Philippines or access to health care there. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

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 she 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 wife 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 his U.S. citizen spouse as required under section 212(i) of the Act.

In proceedings for an application for a waiver of the 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.