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**U.S. Citizenship
and Immigration
Services**

[REDACTED]

HS

FILE: [REDACTED] Office: SAN FRANCISCO

Date: APR 19 2010

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

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, [REDACTED], is a native and citizen of the Philippines. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting material facts to gain admission into the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. naturalized citizen spouse.

The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant “did not commit willful misrepresentation of material facts when she applied for a visitor’s visa to the United States.” Counsel contends that the applicant’s spouse cannot relocate with the applicant to the Philippines “because it puts his health at a great risk.” Counsel states that the applicant’s spouse’s separation from the applicant “will not only leave [the applicant’s spouse] emotionally devastated but will also put his health and life in jeopardy as well.” *See Appeal Brief*, dated August 30, 2009.

In support of the application, the record includes, but is not limited to, the applicant’s marriage certificate, the applicant’s children’s birth certificates, the applicant’s spouse’s naturalization certificate, financial documentation, medical documentation, and statements from the applicant, her spouse and daughter. 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.

The record reflects that on June 26, 2007, the applicant was issued a B-1/B-2 visitor visa at the U.S. Consulate in Manila, Philippines to visit her daughter, [REDACTED]. On July 29, 2007, the applicant was admitted to the United States as a B-2 visitor. The applicant wed [REDACTED], her former husband and naturalized U.S. citizen, on August 22, 2007 in Las Vegas, Nevada. On October 25, 2007, the applicant’s spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The alien relative petition was approved on April 14, 2008. On June 4, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the underlying approved alien relative petition. On April 20, 2009, in a sworn statement before an immigration officer, the applicant

testified, “I told the consul I want to visit my daughter who was in Texas but I went to my husband to marry him again even if he was living with another woman.”

The Department of State Foreign Affairs Manual states that, “in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident” *DOS Foreign Affairs Manual* § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, “an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence.” *Id.* at § 40.63 N4.7-1(3). Under this rule, “If an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.” *Id.* at § 40.63 N4.7-2.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In the case at hand, the applicant was issued a B-1/B-2 visa on June 26, 2007, and she was admitted to the United States at San Francisco as a B-2 visitor on July 29, 2007. The applicant wed her former spouse, ██████████, a naturalized U.S. citizen, within one month of her entry into the United States on August 22, 2007. The applicant has since resided in the United States and filed an application for adjustment of status to remain permanently in this country. The AAO can therefore presume that the applicant misrepresented her intention when she applied for a visa and was admitted into the United States. *See DOS Foreign Affairs Manual* § 40.63 N4.7-2.

On appeal, counsel asserts that when the applicant applied for a visitor visa, her “sole intent” was to visit her daughter, ██████████, and her family in Texas.¹ Counsel states that the applicant never had any intention to remarry her ex-husband because they had lost communication after the applicant’s spouse came to the United States. Counsel states that during the applicant’s sworn testimony, she actually meant to state that “she applied for a tourist visa to visit her daughter, ██████████, grandchild and son-in-law in Texas however, following her daughter’s instruction, she stopped in San Francisco instead, her ex-husband picked her up, brought her to his home in Pittsburg to await the arrival of their daughter and family who were then scheduled to visit the petitioner herein.” Counsel states that ██████████ “brought the idea of reconciliation between her father and mother” and “convinced her father that her mother would be of great help to him amidst his worsening medical conditions.” Counsel states that the applicant’s spouse’s relationship with his live-in girlfriend, ██████████ “was getting cold.” Counsel states that upon ██████████ invitation, her mother and father “proceeded

¹ The AAO notes that the record reflects that the applicant and her spouse have four adult children together, including ██████████). According to ██████████ declaration, she is a U.S. citizen residing in Kingsville, Texas.

for a short vacation to Las Vegas where [redacted] [sic] and [her] father once more convinced [the applicant] who finally agreed to the persistent plea from her daughter and ex-husband for a second chance especially considering his worsening medical conditions.” See *Appeal Brief*, dated August 30, 2009 at 4-5. These assertions are reiterated in the declarations submitted on appeal from the applicant, her spouse and daughter. See *Declaration of [redacted]* dated August 4, 2009; *Declaration of [redacted]* dated August 4, 2009; *Declaration of [redacted]* dated August 22, 2009.

The AAO has considered the assertions put forth by counsel and finds that they are not consistent with the facts in this case. The factual considerations are that the applicant first wed her spouse on December 11, 1970 in the Philippines. See [redacted]; *Biographic Information (Form G-325)*, dated May 23, 2008. The applicant’s spouse moved to the United States in 1992. See *Letter from [redacted]*, dated October 23, 2007. Counsel asserts on appeal that the applicant and her spouse “had lost communication since [the applicant’s spouse] came to the United States.” See *Appeal Brief*, dated August 30, 2009 at 4. The applicant’s marriage to her spouse was terminated in divorce on October 29, 1993. See *Nevada Second Judicial District Court, County of Washoe, Divorce Decree*. Subsequent to their divorce, the applicant’s ex-husband wed [redacted] on November 8, 1996 in California. See [redacted]; *Biographic Information (Form G-325)*, dated October 5, 2007. Their marriage terminated after six years in divorce on February 7, 2003. See *California Superior Court, County of Contra Costa, Dissolution of Marriage Judgment*. The applicant’s ex-husband then had a relationship with [redacted] with whom he resided, until the first week of August 2007. See *Declaration of [redacted]*, dated August 4, 2009. The applicant asserts that during this time period, she could not trust her ex-husband anymore because he had “carried pervious relationships with other women.” See *Declaration of [redacted]*, dated August 4, 2009. On May 17, 2007, the applicant applied for a nonimmigrant visa to visit her daughter, [redacted] who resides Kingsville, Texas. See *Nonimmigrant Visa Application of [redacted]*, dated May 17, 2007.

In light of these factual considerations, the applicant’s claim that she agreed to last-minute plans to travel from the Philippines to California to meet her ex-husband when she had initially intended to visit her daughter in Texas is particularly incredible. The applicant states in her declaration:

After I received my visa, my daughter, [redacted] purchased a plane ticket for me. Few days before I left, she called and directed me to fly to San Francisco airport where I will be met by her father. She also told me her father has a live-in girl friend at that time. I was hesitant at first but decided to follow my daughter’s instructions.

U.S. government records show that the applicant has previously visited the United States. According to counsel, the applicant had no contact with her ex-husband since his entry into the United States. The applicant has not explained the reason she, after 13 years of divorce and no contact with her ex-husband, readily agreed to follow her “daughter’s instructions” and visit him in San Francisco while he was living with his girlfriend. The applicant’s claim that she agreed to an unexpected last-minute visit with her ex-husband is further undermined by her assertion that she

“could not trust him anymore having carried pervious relationships with other women.” The AAO therefore finds that the applicant has failed to rebut the presumption that she had the preconceived intention of re-marrying her ex-husband when she applied for a nonimmigrant visa and was admitted to the United States as a nonimmigrant visitor. Accordingly, the AAO affirms the director’s determination that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides:

- (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.

The AAO notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant’s spouse. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the 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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals 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). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel asserts that the applicant’s spouse has organic brain disease and had two strokes in 2006. Counsel states that the applicant’s spouse “suffers from serious memory loss, sleep apnea, severe high frequency sensorineural hearing loss with tinnitus, secondary to noise exposure as well as presbycusis and possible pregenetic disposition, uncontrolled hypertension and elevated cholesterol, recurring chest pain, coronary artery disease status post stent placement, severe reflux disease, arthritis, diabetes and severe anxiety and depression.” Counsel states that the applicant assists her spouse when he is incapacitated, gives him his medications, prepares his meals, and takes him to doctors’ appointments. Counsel states that the applicant works “extra jobs” to compensate for her husband’s lost income in order to meet their financial responsibilities. Counsel notes that “Probably the worst hardship the [applicant’s spouse] will face is separation from his wife.” *See Appeal Brief*, dated August 30, 2009 at 1-2. These assertions are reiterated in the declarations submitted on appeal from the applicant and her spouse. *See Declaration of [REDACTED]*, dated August 4, 2009; *Declaration of [REDACTED]*, dated August 4, 2009.

As corroborating documentation, the applicant furnished her spouse’s medical records. The applicant presented a hearing loss evaluation diagnosing her spouse with “Bilateral moderate to severe high frequency sensorineural hearing loss with tinnitus likely secondary to noise exposure as well as presbycusis and possible pregenetic disposition.” The evaluation notes that the applicant’s spouse has a history of “Hearing loss, hypertension, chest pain, coronary artery disease status post stent placement, elevated cholesterol, sleep apnea, stroke, reflux disease, arthritis, diabetes.” *See Evaluation from [REDACTED]*, dated February 19, 2009. The applicant presented the findings from a Brain MRI stating that her spouse has paranasal sinus inflammation, two chronic lacunar infarcts, mild to moderate age related white matter changes, and mild diffuse cerebral atrophy. *See Evaluation of [REDACTED]*, dated January 28, 2009. The applicant also

furnished copies of a physician note handwritten on a prescription pad dated February 9, 2009 stating that her spouse is “off work medical until 1/1/10 organic brain disease. . . . [REDACTED] has a positive MRI of brain – his brain has evidence of stroke & aging beyond what is expected” The remainder of the note is illegible. *See Physician Notes from [REDACTED]* dated February 9, 2009. The AAO finds that these documents illustrate that the applicant’s spouse is suffering from a number of chronic medical conditions.

The AAO acknowledges that the applicant’s spouse will experience emotional hardship if he remains in the United States without the applicant. This case arises in the Ninth Circuit. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, 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). The situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant’s spouse would suffer extreme physical distress if he were separated from the applicant. The suffering experienced by the applicant’s spouse would surpass the hardship typically encountered in instances of separation because of the documented improvements to the medical conditions suffered by the applicant’s spouse as the result of the applicant’s support. The AAO therefore finds that the applicant has established that her spouse would suffer extreme hardship if they are separated due to her inadmissibility.

The next issue to be addressed is whether the applicant’s spouse would suffer extreme hardship if he returned with the applicant to his native country of the Philippines. Counsel asserts that the applicant’s spouse could not relocate with her to the Philippines because it would put his health at great risk. Counsel refers to the U.S. Department of State travel advisory for the Philippines and states that the applicant’s spouse’s medical needs will not be adequately provided by the medical facilities or hospitals in the Philippines. Counsel states that the applicant’s spouse will lose his health coverage. Counsel states that the applicant’s spouse will not be able to afford the medical maintenance costs to treat and care for his major health problems. Counsel states that the applicant’s spouse’s medical conditions and age make it less likely that he will find a good job in the Philippines. Counsel states that the applicant’s spouse will lose his retirement benefits if he relocates with his wife to the Philippines. *See Appeal Brief*, dated August 30, 2009 at 2-3. These assertions are reiterated in the declarations submitted on appeal from the applicant and her spouse. *See Declaration of [REDACTED]*, dated August 4, 2009; *Declaration of [REDACTED]*, dated August 4, 2009.

The AAO notes that the current U.S. Department of State travel advisory for the Philippines provides the following information on medical facilities in the country:

Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities

provided by hospitals and doctors in the United States. Medical care is limited in rural and more remote areas.

Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full. A list of doctors and medical facilities in the Philippines is available from the U.S. Embassy in Manila.

U.S. Department of State, Country Specific Information, Philippines, dated November 6, 2009.

The AAO finds that this document does not provide sufficient information on the status of health care in the Philippines to allow us to render a conclusion that the applicant's spouse would be unable to seek adequate treatment for his medical conditions in the country. The applicant has furnished no other reports on the status of medical care in the Philippines. Further, the applicant has not submitted a letter from her spouse's physician indicating whether his condition has stabilized or whether he may require additional medical procedures in the future. Nor does it indicate whether the medical procedures he may require are complex and only available in the United States.² Moreover, the applicant's assertion of economic detriment is based on speculation, and therefore, does not alone rise to the level of extreme hardship. The applicant has failed to indicate how she supported herself during her residence in the Philippines. It should be noted that the record indicates that three of the applicant's spouse's four adult children may be residing in the Philippines. The record contains a letter from the applicant's spouse that was filed with his Petition for Alien Relative (Form I-130) stating that he and the applicant have four children, including their daughter, [REDACTED]. He states, "Please let me know when my other three kids can qualify to come here." See *Letter from [REDACTED]*, dated October 23, 2007. The Form I-130 reflects that the applicant and her spouse's four adult children were born in the Philippines. The applicant and her spouse therefore appear to have significant family ties and support in the Philippines.

The AAO recognizes that the applicant's spouse's relocation to the Philippines may result in a reduction in his standard of living. However, this factor alone does not necessarily result in extreme hardship. U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.

² 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 uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”).

In this case, the record does not contain sufficient evidence to show that the aggregate hardships faced by the applicant's spouse if he relocated to the Philippines 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 eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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.