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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

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*H2 #6 H5*



**MAY 28 2010**

FILE: [REDACTED] Office: SACRAMENTO, CA Date:

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:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Sacramento, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 4, 6, dated September 18, 2009.

On appeal, counsel asserts that the field office director legally erred and abused his discretion by denying the waiver application. *Brief in Support of Appeal*, at 2, dated November 12, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, statements from the applicant's spouse's mother and sister, information on depression, Philippine employment advertisements, country conditions information on the Philippines, a psychological evaluation of the applicant's spouse, a medical appointment reminder for the applicant's spouse, an infertility cost share worksheet, articles on infertility and infertility treatment, and articles on the nursing profession in the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on October 6, 2004, the applicant presented a fraudulent passport and visa to procure admission to the United States. Based on this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

- (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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship experienced by the applicant is relevant only to the extent it causes hardship to a qualifying relative. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to a qualifying relative must be established whether the qualifying relative relocates to the Philippines or remains in the United States, as the qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to the Philippines. Counsel states that the applicant's spouse's parents live with him and there is no other family to help them; the Philippine economy is in deep depression; the country suffers from corruption, age discrimination, drug addiction, overpopulation, pollution and is home to terrorist organizations like the New People's Army; he has several family members residing in the United States; and he would be leaving a life he has worked hard to establish since immigrating to the United States. *Brief in Support of Appeal*, at 3-4, 6, 8. The record includes numerous documents on country conditions in the Philippines. The AAO notes the Department of State Travel Warning, dated January 27, 2009, which advises against travel to the southern Philippine islands of Mindanao and the Sulu Archipelago. There is, however, no indication in the record that the applicant's spouse would reside in the islands of Mindanao or the Sulu Archipelago. The applicant's states that life in the Philippines is economically hard, she does not see a bright future for herself and her spouse, and she will not be able to find employment due to her age. *Applicant's Statement*, at 7.

The applicant's spouse states that he will not be able to find employment in the Philippines due to his age and the surplus of nurses there; he will not earn enough to support his family comfortably even if he found employment; he will lose his medical insurance, which he has used to pay for the

his spouse's fertility treatments; he will not be able to afford fertility treatments in the Philippines; his parents who live with him will have no place to go; his father has been laid off from work, his mother does not earn much, his parents are getting old and cannot cover their living expenses, both of his parents have diabetes, his father lost his medical insurance, his mother cannot add his father to her medical insurance as she earns too little, he and the applicant prepare his parents' food and take them to doctor's appointments, he and the applicant help them get exercise and translate for them; and his sister cannot care for them as she has other responsibilities. *Applicant's Spouse's Statement*, at 4-5.

The record includes several Philippine employment advertisements for nurses that indicate the jobs being advertised are open only to individuals who are younger than the applicant and her spouse. The AAO notes these advertisements but does not find them to establish that the applicant and his spouse would be unable to find employment in the Philippines, although such employment might not be in the field of nursing. The record also includes an infertility appointment reminder for the applicant's spouse for June 30, 2009 and an infertility cost share worksheet. However, there is no documentary evidence that establishes the applicant and his spouse have begun fertility treatment or that they could not afford fertility treatment in the Philippines. The applicant's spouse's mother states that she and her spouse have diabetes and the applicant cooks for them. *Applicant's Spouse's Mother's Statement*, at 1, dated July 23, 2009. The record does not include documentary evidence that demonstrates the applicant's spouse's parents' medical problems, their financial hardship or any other hardship they would experience without the applicant's spouse. It also fails to demonstrate how any hardship they might experience would affect their son, the only qualifying relative in this proceeding. The AAO also notes that the record contains no supporting evidence that establishes the applicant's sister would be unable or unwilling to assist her parents in her brother's absence. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). Going on record without supporting documentation will not 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)).

The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if he relocated to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse is a psychologically unsophisticated man who is uncommonly dependent on the applicant to provide him with emotional support, structure and security; both of the applicant's spouse's parents live with him; and the applicant and her spouse are undergoing fertility treatment. *Brief in Support of Appeal*, at 3. Counsel further states that the applicant's spouse would need to pay the bills, care for his mother, take care of the household chores and work full-time; his added responsibilities would mean added stress and strain and he would not have time for much else; he could not afford to visit the

applicant in the Philippines; they would not be able to undergo fertility treatment to realize their dream of having children; and the mere thought that the applicant would have no other legal basis for remaining in the United States in the foreseeable future would cause the family ineffable distress and despair. *Id.* at 8-10.

The applicant states that she and her spouse tried to conceive a child when they resided together in the Philippines and they consulted doctors but could not get a definite diagnosis; when her spouse left for the United States the chances of pregnancy and having a family remained a dream; a fertility clinic screening revealed that she had a blockage in her fallopian tubes, she had a procedure done to flush out the blockage and she is now on medicine to increase her chances of pregnancy. *Applicant's Statement*, at 2, 6. The applicant's spouse states that he arrived in the United States on May 4, 2004; after a few weeks of being away from the applicant he could not function, could not eat and had trouble sleeping, became steadily depressed, spent a lot of money making international calls just to hear the applicant's voice, and he felt the same way for more than a year; he does not want to experience being away from the applicant again; the applicant pays the utility bills; he is being furloughed at his job due to state budget cuts; he passed the [REDACTED], but cannot find an opening due to a state instituted hiring freeze; his salary is \$2,978.92 a month, his auto expenses are \$680 monthly, legal fees are estimated at \$10,000, fertility clinic expenses are estimated at \$3,500, credit card debt is \$12,479.78; he cannot make the payments on his mortgage since his interest rate was adjusted; he does not know if he could add calling charges, air fare and remittance money to his expenses; he helps the applicant with her fertility treatment; he has been with the applicant for the past 20 years and she has always been there for him; he does not have close friends and finds it hard to confide in other family members; the stress of finances, work, his parents' medical conditions, his and the applicant's desire to conceive a child and fear due to the applicant's immigration status is taking a toll on his health; and he is constantly anxious, fearful and distracted, and finds it hard to sleep some nights. *Applicant's Spouse's Statement*, at 2, 4-6.

The applicant's spouse was evaluated by a psychologist who states that the applicant's spouse's emotional state has deteriorated; he has difficulty sleeping and is persistently preoccupied with the applicant's immigration status and the likelihood that they will not be able to conceive a child together; he is sad, distracted and feels hopeless; he is plagued by overwhelming anxiety and suffers from painful muscle tension and shortness of breath; he is persistently fatigued and has difficulty making decisions; his work performance is being affected; he has become uncharacteristically irritable, impatient and forgetful; he completed standardized personality/symptom inventories; and his compromised level of functioning will deteriorate even further if he is separated from the applicant. *Psychological Evaluation*, at 4. The psychologist diagnoses the applicant's spouse with Major Depressive Disorder, Moderate. *Id.*, at 7.

The record includes an infertility appointment notice for the applicant's spouse for June 30, 2009 and a fertility cost share worksheet, but does not document that the applicant and his spouse are currently undergoing fertility treatment. The record also includes a Notice of Default and Election to Sell Under Deed of Trust for the applicant's spouse dated May 22, 2009 and earnings statements that show he is being furloughed at his place of employment. When the hardship factors established by

the record are considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship in the event that he remains in the United States without the applicant.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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. *Hassan v. INS, supra*, held further 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.

A review of the documentation in the record, when considered in its totality, does not establish that the applicant would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in a discussion of 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.