



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

H2



File: [Redacted] Office: SAN FRANCISCO, CA

Date: JAN 29 2003

IN RE: Applicant: [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)

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel asserted that the district director erred in finding that the applicant's spouse would not suffer extreme hardship if the applicant's waiver request is denied. Counsel also asserted that the evidence on record established several factors which, taken cumulatively, prove extreme hardship to the applicant's spouse.

On motion, counsel asserts that the Associate Commissioner erred in finding that the applicant's spouse would not suffer extreme hardship should the applicant be removed from the United States and erred in finding the applicant not entitled to a waiver of inadmissibility. On motion, counsel states that since the filing of the appeal, supervening events have transpired, namely the pregnancy of the applicant's spouse and the couple's purchase of a home.

The record reflects that the applicant procured admission into the United States in February 1997 by presenting a passport belonging to another person.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-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 states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. 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) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, 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 record includes statements from the applicant's spouse that she loves her husband very much; that the mere thought of being separated from him causes her stress and anxiety; and that if she were to relocate to the Philippines to remain with her husband, she would suffer extreme hardship for a variety of reasons. The spouse explained that she lives with and cares for her father and has other close and immediate family members who reside and work in this country. She derives support from her father, family, and friends, and to lose their physical closeness and emotional support would be difficult for her. If she accompanied her husband to the Philippines she would lose her personal and professional ties to this country and would suffer economic hardship because she would be forced to quit her studies and would find it difficult to obtain employment in the Philippines due to the economic crisis in that country. In addition, the spouse feels that she would expose her life and health to danger in the Philippines due to safety and security concerns there and the lack of quality medical facilities and health benefits she now enjoys in the United States. On appeal, counsel also submitted a report from a licensed psychologist dated May 30, 2000, indicating that the applicant's spouse is frightened of the prospect of living in the Philippines and stressed because she and the applicant cannot plan for a child because of the uncertainty of her husband's status in the United States.

On motion, counsel submits evidence that the applicant's spouse was due to give birth in September 2001. The pregnancy was long-awaited as the couple had been trying to conceive since they were married in 1997 but had difficulties because of cyst growths in the spouse's ovaries which had to be removed by surgery in 1998. Counsel asserts that the applicant's removal at this time is not only cruel but may endanger the life of his spouse and child should the wife be unable to bear the stress resulting from the applicant's threatened removal. On motion, counsel also submits evidence that after the denial of the applicant's initial waiver application and appeal, he and his spouse purchased a home. Counsel asserts that this financial undertaking and commitment requires the joint incomes of the applicant and his spouse. Counsel concludes on appeal that the spouse's concern for her safety and that of her child, coupled with the purchase of a new home and her father's continuing medical condition, makes it imperative for her to remain in the United States.

The decisions of the applicant and his spouse to have a child and to purchase a new home were undertaken after the denial of his initial waiver request and dismissal of the appeal. It may be

concluded that at the time they undertook these additional burdens they were aware that the applicant may face removal from the United States. This factor undermines the applicant's argument that his spouse would suffer extreme hardship if he is removed or found to be inadmissible to the United States.

As noted in the dismissal of the applicant's appeal, there are no laws that require the applicant's spouse to leave the United States and live abroad. 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. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The 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.

A review of the factors presented, and the aggregate effect of those factors, indicates that the applicant's spouse would suffer hardship due to separation. The applicant has failed, however, to show that the qualifying relative would suffer extreme hardship over and above the normal disruptions involved in the removal of a family member.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

To recapitulate, the record clearly reflects that the applicant knowingly obtained a passport in an assumed name and used that document to procure admission into the United States by fraud or willful misrepresentation. After entry, he remained unlawfully and subsequently married a United States citizen.

The favorable factors in the matter include the applicant's absence of a criminal record and the hardship of separation to a qualifying relative. The unfavorable factors include the applicant's procuring a passport in an assumed name, using that passport to obtain admission into the United States by fraud or willful misrepresentation, and his unlawful presence after having procured entry.

The applicant's actions in this matter cannot be condoned. The unfavorable factors in this matter outweigh the favorable ones. 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 Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed. The application will be denied.

ORDER: The Associate Commissioner's order dated April 23, 2001 dismissing the appeal is affirmed. The application is denied.