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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: APR 0 8 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States by a consular officer 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 visa and admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on his U.S. citizen spouse if his waiver were denied. The application was denied accordingly. The decision of the district director was affirmed on appeal by the AAO. *See* Decision of the AAO, dated July 19, 2002.

On motion to reopen and reconsider, counsel states that the decision of the AAO was erroneous as the record in the application clearly establishes extreme hardship to the applicant's spouse. *See* Form I-290B, dated September 8, 2001.

In support of these assertions, counsel submits a birth verification document issued by the California Pacific Medical Center and copies of photographs of the applicant and his spouse with their daughter. The record also contains letters from two physicians treating the applicant's spouse; a copy of the World Health Organization's ranking of world health systems; a copy of Philippines Geography 2000; several articles addressing country conditions in the Philippines; a copy of a memo signed by Michael Cronin, Acting Commission Office of Programs, Immigration and Naturalization Service, dated March 7, 2000 and a declaration of the applicant's spouse, dated June 28, 2001. The entire record was reviewed and considered in rendering a decision on the application.

The record reflects that on February 26, 1995, the applicant presented a passport reflecting an erroneous birth date which he used to procure admission into the United States as a nonimmigrant visitor. The applicant subsequently remained in the United States beyond the period of authorized stay and married his U.S. citizen spouse on January 16, 2000.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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 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 violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. On motion to reopen and reconsider, counsel establishes the birth of the applicant's child. *See* Birth Verification, dated April 3, 2002 and Copies of Photographs. The AAO notes, however, that the language of section 212(i) does not allow for consideration of hardship to the applicant's child(ren) in waiver proceedings. Hardship the alien himself experiences upon deportation is also irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present application is that suffered by the applicant's wife. 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, 565-566 (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 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.

Counsel alleges that the decision of the director of the AAO is based on an incomplete review and analysis of the record provided in the instant application and is contrary to prevalent precedent in the United States. *See* Motion to Reconsider the AAO Director's Dismissal of Petitioner's Appeal to the USINS Denial of Her Request for Waiver of Inadmissibility under Section 212(i) of INA 8 U.S.C. 1182(i), dated August 20, 2002. Counsel reiterates the severity of the asthma suffered by the applicant's wife; the close familial ties enjoyed by the applicant's spouse in the United States; the inability of the applicant's wife to obtain sufficient employment in the Philippines and the dangers to the life of the applicant's spouse in the Philippines to

support the proposition that the applicant's wife cannot relocate to the Philippines. *See Id.* at 6-20. Counsel contends that the decision of the director of the AAO does not take into account the testimony provided by physicians attending the applicant's wife indicating that her medical condition would be complicated by the humid climate of the Philippines and the lack of adequate medical care available there. *See* Letter from Lily M. Tan, MD, dated September 17, 2001. *See also* Letter from Karen Khoo, MD, dated May 3, 2001, and The World Health Organization's Ranking of the World's Health Systems, dated August 20, 2002. While the record supports the above assertions of counsel, the AAO notes that counsel provides no support for the assertion that the medical system in the Philippines "makes it *highly likely* that a move to the Philippines will result in *serious medical consequences* for Mrs. Malonzo." *See* Motion to Reconsider the AAO Director's Dismissal of Petitioner's Appeal to the USINS Denial of Her Request for Waiver of Inadmissibility under Section 212(i) of INA 8 U.S.C. 1182(i) at 6 (emphasis added). The AAO finds that this assertion of counsel standing alone is speculative and unsupported by the record and is therefore deemed unpersuasive.

Counsel further offers the statements of the applicant's wife to support the proposition that her familial relationships in the United States are important to her and should not be disrupted by relocation of the applicant's wife to the Philippines. *See* Declaration of Stephanie U. Malonzo Regarding Extreme Hardship, dated June 28, 2001 (stating "The fourth reason I would suffer extreme hardship is that if I were forced to live in the Philippines, I will [sic] endure a full seperation [sic] from my twin sister ... If I do not see and talk to her in a few days, I feel very depressed.").

Even if the previous AAO decision finding a lack of extreme hardship to the applicant's spouse if she relocated to the Philippines was erroneous, the record does not establish extreme hardship to the applicant's spouse if she remains in the United States maintaining her employment, close familial ties and access to adequate health care in the country where she lives and is a citizen. *See Id.* (stating "I am a native born United States citizen. I am an American lady.") The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to leave the United States and live abroad as a result of the denial of the applicant's waiver.

While counsel asserts that the applicant's spouse faces financial hardship in the United States as the sole source responsible for paying all of the couple's expenses, the record does not establish that the applicant is unable to work to support himself financially in the Philippines. The decision of the director of the AAO finds that the presence of the applicant will rarely be necessary for the financial support of a qualifying relative because an alien beneficiary is unable to execute an affidavit of support on behalf of a U.S. citizen. *See* Decision of the Director of the AAO at 5. Counsel vigorously refutes this position citing to an Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] memorandum supporting counsel's position. *See* Motion to Reconsider the AAO Director's Dismissal of Petitioner's Appeal to the USINS Denial of Her Request for Waiver of Inadmissibility under Section 212(i) of INA 8 U.S.C. 1182(i) at 10 (quoting Memorandum signed by Michael Cronin, Acting Commissioner Office of Programs, dated March 7, 2000).

The AAO notes, however, that in the absence of the affidavit finding of the previous AAO decision, the record still does not evidence that the applicant's spouse is unable to support herself financially. Counsel lists various creditors of the applicant's spouse without reference to the amounts owed to them individually. *Id.* at 13. Counsel refers to all of these sums as "debts" while it appears that at least some of them are simply open accounts for living expenses. *Id.* (listing Allstate and a mortgage on her shared interest in her house as "debts"). The record does not demonstrate that the listed expenses are mandatory or cannot be paid by the

applicant's spouse in the absence of the applicant. 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.

Counsel fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Further, counsel fails to establish that the prior decision of the AAO was based on an incorrect application of law or CIS policy.

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 Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The record does not demonstrate hardship amounting to extreme hardship in this application. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, as stated in the prior decision of the AAO.

The applicant in this case has failed to identify any erroneous conclusion of law or statement of fact in his appeal. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of July 19, 2002 dismissing the appeal is affirmed.