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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

FILE:



Office: LOS ANGELES

Date: APR 01 2005

IN RE:



PETITION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 first entered the United States on May 4, 1982, and was found to be inadmissible to the United States under two separate grounds of inadmissibility corresponding to fraud and various criminal violations. On October 24, 2003, the district director found that the applicant was 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 committed fraud in connection with his entry into the United States on May 4, 1982, through the use of a fraudulent passport and visa obtained under an assumed identify. In addition, the district director also found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), arising from several different convictions between 1993 and 1997, including inflicting corporal injury upon a spouse, theft by use of access card data, and battery. The district director found that the applicant had been convicted of crimes involving moral turpitude. *See Decision of the District Director*, dated October 24, 2003.

The applicant married a lawful permanent resident of the United States on February 3, 1985, and is the beneficiary of a Petition for Alien Relative (Form I-130) approved on August 30, 1991, based upon this marriage. The applicant seeks waivers of inadmissibility pursuant to sections 212(h), and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in order to remain in the United States to reside with his lawful permanent resident spouse and U.S. citizen daughter.

The district director concluded that although the applicant had submitted evidence in support of a claim of hardship, the evidence did not rise to the level of extreme hardship to a qualifying relative. The district director further found that the evidence demonstrated that the applicant's criminal history and continual disrespect for the law merited a denial of his Application for Waiver of Grounds of Excludability (Form I-601). *See Decision of the District Director*, dated October 24, 2003.

Counsel has filed a Notice of Appeal (Form I-290B) from the decision of the district director. Counsel summarized the reasons for the appeal on the Form I-290B and has also submitted a brief. The principal contentions in support of appeal are that the district director failed to consider all relevant factors, failed to consider the cumulative effect of the factors, and failed to provide a reasoned explanation for her conclusions. Counsel asserts that the evidence in the record demonstrates that the extreme hardship that would be suffered by the applicant's spouse clearly overcomes the adverse factors. Counsel further asserts on appeal that the applicant's spouse has developed "severe emotional and psychological problems due to the applicant's situation." *See Notice of Appeal (Form I-290B)*, dated November 20, 2003. It does not appear, however, that additional evidence is being offered in support of this contention. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act states in pertinent part, that:

- (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime , or

- (II) a violation (or a conspiracy to attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

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.

- (ii) Falsely claiming citizenship. -

- (I) In General -

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

.....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

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 District Director's Decision

The district director's decision recited the facts and cited the provisions of law under which the applicant was found inadmissible, and noted the applicable waiver provisions. The decision consisted of a summary of the applicant's criminal history, and a discussion of the assertions of extreme hardship set forth in the spouse's affidavit submitted in support of the requested waiver. The district director's decision specifically considered the spouse's claim of the economic and emotional hardship she and her children would suffer, as well as the alleged detrimental effects to her health if the applicant were to be forced to leave the United States. The district director concluded that the hardships set forth did not rise to the level of extreme hardship.

The Applicant's Immigration and Criminal History

Before addressing the merits of the applicant's waiver application, the AAO believes it would be helpful to set forth the applicant's immigration and criminal history. The record reflects that the applicant first entered the United States on or about May 4, 1982, through the use of a fraudulent passport and a visa obtained under the assumed identity, that of [REDACTED]. Approximately one year later, in May 1983, the applicant filed an affirmative application for asylum with the Los Angeles asylum office of the Immigration and Naturalization Service (INS) (now Citizenship and Immigration Services or CIS), claiming that he had fled from persecution in the Philippines and noting his use of the false identity. *See Request for Asylum in the United States (Form I-589)*, dated May 10, 1983. The INS mailed a Notice of Intent to Deny to the applicant giving him fifteen days to rebut the notice and present additional evidence in support of his application. No additional information was received from the applicant, and the asylum application was denied on September 26, 1984. The applicant was notified on that same date that he was required to depart the United States on or before October 26, 1984.

It appears that instead of departing the United States, the applicant remained in the United States and subsequently married his spouse, a lawful permanent resident, on February 3, 1985. The applicant's wife gave birth to a daughter, [REDACTED] June 20, 1985. The applicant's spouse thereafter filed a Petition for Alien Relative (Form I-130) on his behalf, which was approved on August 30, 1991. The applicant filed an Application for Adjustment of Status (Form I-485), on September 23, 1997. During the course of the interview on the application, the applicant was asked about his criminal history, which consists of the following convictions as evidenced by the information contained in the record.

The applicant's first arrest occurred on March 20, 1993, and he was charged with and convicted, on April 6, 1994, of corporal injury to his spouse in violation of section 273.5A of the California Penal Code. The applicant was convicted on August 11, 1994, of theft by use of access card data. The applicant was convicted the following year on May 14, 1995, of inflicting corporal injury on a spouse. He was sentenced to three years and ordered to serve 30 days in jail. The applicant was arrested two years later on February 23, 1997, and charged with spouse beating and willful cruelty to a child. He was ultimately convicted of battery in violation of section 242 of the California Penal Code.

Extreme Hardship Analysis

The evidence in support of the applicant's waiver application consists primarily of the statements of the applicant and his spouse. In addition to the statements, the record also contains copies of various documents evidencing the couple's marriage, the birth of the couple's daughter, school records reflecting the daughter's progress in school, naturalization certificates relating to the spouse's other children and evidence of the couple's purchase of a home. In addition, the record contains copies of bills, medical insurance documents, and a letter from a Kaiser Permanente physician indicating that the applicant's spouse has been receiving medical care for Iron Deficiency Anemia.

The principal evidence articulating the hardship to the applicant's wife and daughter consists of the affidavits offered by the couple. The applicant states in his most recent statement of September 27, 2003, that his daughter Cathleen, would be "devastated" if he is forced to leave the United States. He asserts that they have a very close relationship and love each other very much. He states that if separated, he would be unable to provide her with love and support. Additionally, his daughter would be uprooted from her school resulting in adverse effects. With respect to the hardship to his spouse, the applicant asserts that without his income, his wife would be unable to support herself, as the couple relies upon both of their incomes for their support, and she would be unable to pay the bills. In addition, the applicant asserts that he and his wife are happily married and have been able to work out their problems. The applicant additionally states that he regrets his past mistakes and has changed for the benefit of his family. *See Affidavit of Resy Bagsik*, dated September 27, 2003.

The affidavit from the applicant's spouse is very similar. According to the spouse, the applicant and his daughter have a very close relationship. She states that it would be very hard for the daughter if she were unable to see her father every day and that she is a teenager who needs her father in her life. The applicant's spouse also states that it would be an economic hardship if the applicant were removed. She states that their rent is \$1,400 per month and their daughter attends an excellent school from which she would be uprooted if they were no longer able to afford to live in their home. The spouse also indicates that she and her daughter would be worried about her husband if he were forced to return to the dangers that he faced in the Philippines. The spouse closes by stating that she loves her spouse and would experience heartbreak and devastation for herself and her daughter if her husband were not permitted to remain in the United States. *See Affidavit of Socorro Y. Bagsik*, dated September 27, 2003.¹

¹ The AAO has also reviewed and considered the affidavits previously submitted by the applicant and his spouse in connection with the initial application in 2000. The affidavits are virtually identical to the 2003 affidavits and add no additional information.

Aside from the emotional and financial hardships articulated in the statements, counsel asserts on appeal that the health of the applicant's spouse would suffer, as she would be unable to pay for the cost of her medical treatment that is now being covered by her medical insurance. The evidence in the record addressing her medical condition is the previously noted letter from a doctor with Kaiser Permanente stating simply that she has been receiving medical care for Iron Deficiency Anemia. See *Letter from G.J. Sturich, M.D.*, dated September 24, 2003. Also enclosed is a statement from Kaiser Permanente relating to the same visit. No other evidence concerning the spouse's medical condition was submitted.

Counsel asserts in the appeal brief that the evidence in the record addresses nearly all of the factors set forth in *Matter of O-J-O-*, I&N Dec. 381 (BIA 1996), and thereby demonstrates extreme hardship. In addition, counsel asserts that the district director misapplied the law to the facts of the case. While the AAO agrees that the district director could have addressed the evidence submitted in support of the application more specifically, it does not agree with counsel's contention that the applicant's evidence established extreme hardship to a qualifying relative. Moreover, the AAO notes that counsel makes various assertions in the brief that are not supported by the evidence in the record. The AAO does not accept as evidence the statements in the record made by counsel as to the hardship that would be experienced by the applicant's wife and daughter. The assertions of counsel are not evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the evidence demonstrates that the applicant's spouse will endure hardship if she returns to the Philippines because she has no close family members in the Philippines, is extremely close to her family members and spends much time with those family members. *Counsel's Brief on Appeal*, dated December 16, 2003 at p. 4. Counsel goes on to state that the applicant's spouse is extremely close to her three children who live near her and is dependent upon them or they upon her. Although counsel makes these assertions, they are unsupported by the evidence in the record. The statements of the applicant and her spouse make no reference to the existence of other family members, their location, or the spouse's relationship with them. In terms of the relationship with her children, the record does articulate concerns about her daughter, but aside from the naturalization certificates of her sons, the record contains little else regarding her relationship with them, let alone any evidence that supports a relationship of dependency. Even if such evidence existed, the AAO notes that as a lawful permanent resident, there is nothing that requires that the applicant's spouse depart the United States. Thus, she is able to maintain those relationships. Furthermore, if she elects to accompany her husband to the Philippines, the evidence reflects that all of her children are now adults. The daughter will soon turn twenty-years of age. She presumably graduated from high school in June of 2003, as her school records reflected that she was a senior in high school during the January to April 2003 school quarter. See *Third Quarter 2003 Grade Report for Cathleen Bagsik*. The evidence reflects that the spouse's two sons are now twenty-six, and thirty years of age. While it is to be expected that the applicant's spouse has strong emotional ties to her children, there is nothing to support the contention that they somehow remain dependent upon her in the course of their daily lives.

In terms of the impact of any resulting separation, counsel's brief asserts that due to the distance between the Philippines and the United States the applicant would be unable to remain in touch with her children because of the high cost of air travel and telephone calls. Although the separation would be difficult, the AAO believes that given the strong relationship that is professed to exist between the applicant's spouse and her

children that they will maintain contact with each other. The separation does not itself present any unique factors that would constitute extreme hardship. Moreover, the applicant's spouse is not required to leave the United States and a decision to do so would be her choice.

Counsel also asserts that the applicant's spouse would suffer extreme hardship if she returned to the Philippines due to the difficult transition that she would experience. Counsel cites a lack of close relatives, the economic and societal problems in that country, and the personal financial hardship that she would experience in leaving the United States and seeking employment in the Philippines. Counsel further asserts that the couple would be unable to provide financial support to their daughter to allow her to attend college. The AAO notes that while the transition would involve some difficulties, the assertions regarding her inability to establish a life or obtain employment in the Philippines constitute speculation. As counsel notes, the applicant has a good position in the United States and has acquired skills, training, and English language skills that will assist her in obtaining employment. With respect to the daughter's college plans, the AAO notes that while this may pose a hardship, it cannot be considered to be an extreme hardship. There is no evidence that options such as student loans or scholarships have been pursued. Once again, however, the AAO notes that the spouse is free to remain in the United States and would thus avoid those hardships.

Finally, counsel's brief emphasizes that the spouse has iron deficiency anemia and requires medical treatment. According to counsel, the applicant's spouse has been under "careful medical observation and needs ongoing treatment." Counsel also asserts that her insurance has enabled her to fully cover her medical bills, whereas in the Philippines the cost for the treatment would be extremely high and is perhaps unavailable. *Counsel's Brief*, at p.6. While the AAO does support a finding that the applicant's spouse has been receiving medical care for iron deficiency anemia, that is the only finding that the evidence supports. The remainder are merely unsupported assertions of counsel. As noted, the only evidence in the record is a very brief letter from a doctor at Kaiser Permanente verifying that she has received treatment for iron deficiency anemia, and a bill reflecting one office visit and noting a twenty-dollar co-payment for the visit. There is no medical letter, or other evidence describing the extent, if any, of the applicant's incapacity, her course of treatment, and her ultimate prognosis. There is no evidence in the record supporting the statements that the treatment of her condition would be prohibitively expensive, or unavailable in the Philippines. Consequently, the AAO considers counsel's assertions to be unsupported by the evidence, and concludes that the spouse's medical condition does not constitute extreme hardship. Even if it did, the applicant can avoid such hardship by continuing to receive her medical treatment in the United States by choosing to remain here and continue her course of treatment until such time as it is completed, or indefinitely if necessary.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) 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.

While counsel argues that the applicant has offered sufficient evidence in support of all the hardship elements, the AAO finds that the district director did not err in concluding that these factors did not rise to the level of extreme hardship. In general, the assertions are general and speculative in nature. They lack supporting evidence, that could lead the AAO to conclude that the hardships are so significant that they can be considered extreme in nature. In addition, the applicant's spouse is in a position to avoid much of the hardship she fears by choosing to remain in the United States. As a lawful permanent resident, there is nothing that requires her to depart the country.

Although the applicant's spouse and daughter will experience some hardships, they are not different from those hardships normally associated with the severing of family and community ties. 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, *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 (9th 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.

As we have determined that the applicant has not demonstrated extreme hardship to a qualifying relative, it is not required that we move on to the next step of analyzing whether the applicant warrants a favorable exercise of discretion. Nevertheless, after discussing the applicant's eligibility pursuant to subsection (A), the AAO will proceed to conduct such an evaluation in order to examine whether, in the alternative, the applicant would have merited such an exercise of discretion.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the Board held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12. In addition to the applicant's failure to establish extreme hardship to his spouse and daughter, the AAO finds that the seriousness of the applicant's crimes and his lengthy record of serious offenses, strongly compels the conclusion that the application should be denied in the exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant.

Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is dismissed.