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

PUBLIC COPY



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FILE:



Office: BANGKOK DISTRICT OFFICE Date:

AUG 16 2005

IN RE:

Applicant:



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:

SELF-REPRESENTED

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 Acting Immigration Attaché, Bangkok District Office, 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 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is the fiancé of a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States in K-1 status to marry her fiancé and adjust her status to permanent resident.

The Acting Immigration Attaché 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 Excludability (Form I-601) accordingly. *Decision of Acting Immigration Attaché*, dated May 12, 2004.

On appeal, the applicant contends that if she is prohibited from entering the United States her fiancé will suffer financial and emotional hardship, and the applicant may be separated from her job and subjected to public humiliation. *Brief in Support of Appeal*, received May 26, 2004.

The record contains a statement from the applicant provided with Form I-290B on May 26, 2004; a statement from the applicant submitted as a supplement to Form I-601 on March 29, 2001, and; copies of photographs of the applicant and her fiancé. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that in 1993 the applicant made a willful misrepresentation of a material fact by presenting fraudulent documents and making false statements to a consular officer in Manila, Philippines in order to obtain a B-1/B-2 visa. The record further shows that in 1994 the applicant made a willful misrepresentation of a material fact by making false statements to a consular officer in Manila, Philippines in order to obtain a nonimmigrant visa.

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. As the fiancé of a U.S. citizen, the applicant is eligible to file a waiver under section 212(h)(1)(B) of the Act. Although, section 212(h)(1)(B) of the Act does not specify fiancés of U.S. citizens as qualifying relatives for purposes of an extreme hardship waiver, if an alien seeking a K nonimmigrant visa is inadmissible, the alien can seek a waiver based on 8 C.F.R. § 212.7(a), which provides, in pertinent part:

- (a) *General*—(1) *Filing procedure*—(i) *Immigrant visa or K nonimmigrant visa applicant*. An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In determining that a fiancé is equivalent to a spouse for purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

...

- (a) Fiancé(e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

...

- (3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.

...

- (d) *Eligibility as an immigrant required*. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

Hardship the applicant herself experiences upon being prohibited from entering the United States is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s fiancé. 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 Bureau 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.

On appeal, the applicant contends that her fiancé will suffer financial and emotional hardship if she is prohibited from entering the United States. *Brief in Support of Appeal*, received May 26, 2004. The applicant states that her fiancé's health and work will be negatively affected due to the need to frequently travel to the Philippines. *Id.* The applicant indicates that she may be separated from her job as a public school teacher for "immorality," which is her only source of income. *Id.* She states that she may be subjected to public humiliation. *Id.* The applicant indicated that, if she is permitted to enter the United States, she could assist her fiancé in caring for his mother, thus removing the need to hire a nurse. *Applicant's Supplement to Form I-601 at 2.* The applicant further stated that her fiancé has a long-term kidney sickness, and she can provide necessary care. *Id.*

The applicant asserts that her fiancé will endure emotional distress as a result of separation from the applicant. *Brief in Support of Appeal*, received May 26, 2004. The AAO recognizes that the applicant's fiancé will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

The applicant asserts that her fiancé will suffer economic hardship due to the expense of traveling to the Philippines, and the negative consequences of his absence from work. The AAO acknowledges that, as a result of the applicant's inadmissibility, the applicant's fiancé may incur travel expenses in order to visit the applicant, and that he will be required to balance his travel abroad with the needs of his employment. The record, however, does not establish that the applicant's fiancé will be unable to maintain his financial situation if the applicant is not permitted to enter the United States. 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.

The applicant indicates that her fiancé suffers from a long-term kidney sickness, and that he will be deprived of her care should she be prevented from entering the United States. *Applicant's Supplement to Form*

I-601 at 2. However, the applicant has not submitted any evidence of her fiancé's health status, such as documentation of his medical care including evidence of the referenced illness. Nor has the applicant shown that her fiancé will fail to obtain adequate medical care in her absence. 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 applicant indicated that, if she is permitted to enter the United States, she can assist her fiancé in caring for his mother, thus removing the need to hire a nurse. *Applicant's Supplement to Form I-601 at 2*. The applicant has not submitted documentation to support that her fiancé's mother requires care, such that her fiancé will endure the economic hardship of hiring a nurse should the applicant not enter the United States. Again, 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. at 158. Further, as noted above, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. at 139.

The applicant asserts that if she is prohibited from entering the United States she may suffer economic and emotional hardship including being separated from her job and publicly humiliated. *Brief in Support of Appeal*, received May 26, 2004. As noted above, hardship the applicant herself experiences upon being prohibited from entering the United States is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's fiancé. *See* Section 212(i)(1) of the Act. Thus, evidence of the applicant's hardship in the Philippines is not probative of her eligibility for a waiver under section 212(i).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancé caused by the applicant's inadmissibility to the United States. 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(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 appeal will be dismissed.

ORDER: The appeal is dismissed.