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U.S. Citizenship
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Services

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FILE:

Office: BALTIMORE, MARYLAND

Date: AUG 19 2005

IN RE:

Applicant:

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

ON BEHALF OF APPLICANT:

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 Application for a Waiver of Inadmissibility was denied by the Interim District Director, Baltimore, Maryland, on August 27, 2003. The applicant filed a motion to reconsider, which the interim district director denied on January 15, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines who is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The interim district director found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured admission into the United States by means of fraud or willful misrepresentation. The applicant filed an Application for Waiver of Grounds of Excludability; however, the interim district director denied the waiver application, concluding that the applicant had failed to demonstrate that her spouse would suffer extreme hardship on account of her inadmissibility.

On appeal, counsel asserts that the evidence on the record demonstrates that the applicant's husband will suffer extreme hardship whether he relocates to the Philippines to join the applicant or remains in the United States without her. The AAO has reviewed the entire record and concurs with the district director's decision in this matter.

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.

The applicant admitted that she used another person's passport in order to enter the United States in 1995. She is thus inadmissible pursuant to the above section of the Act.

Section 212(i) of the Act provides that:

- (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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's citizen or lawfully resident spouse or parent. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

Counsel points out on appeal that the Board of Immigration Appeals (BIA) case, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, as counsel acknowledges, 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.

On appeal, counsel indicates that President Bush is an adamant proponent of the value of the institution of marriage, as evidenced by his July 10, 2004 radio address to the nation in defense of marriage and his October 2003 proclamation of Marriage Protection Week. Counsel asserts that the AAO should consider the president's opinion regarding marriage as a favorable factor on the applicant's part. However, no part of President Bush's address or any other pronouncement of presidential policy is intended to weaken the effectiveness of the inadmissibility provisions of the Act. Presidential declarations in support of the importance of marriage do not overcome the applicant's burden to establish extreme hardship to her spouse, as required under the Act.

Counsel asserts that the applicant's husband would suffer extreme hardship in the event he relocates to the Philippines, as he would not be able to work in his occupation of firefighter, and he would be exposed to diseases and terrorism. In addition, counsel points out that the applicant's husband enjoys frequent contact with his family members in the United States, the absence of which would cause him emotional hardship. Counsel notes that the applicant's husband has been employed as a firefighter since he graduated from high school, and according to the applicant's husband's statement of October 9, 2002, he will be eligible for civil service retirement in about two years. Counsel does not address the possibility that the applicant's husband could retire shortly and live on his pension in the Philippines. The applicant's husband's possible lack of employment as a firefighter in the Philippines therefore does not constitute a form of extreme hardship. Moreover, although the applicant's husband would face a period of readjustment in the Philippines, and he would miss his family members in the United States, the evidence on the record does not establish that the applicant would suffer greater hardship than other spouses who relocate to foreign countries.

The record also fails to establish extreme hardship to the applicant's spouse if he remains in the United States maintaining his employment and close proximity to other family members. Counsel refers to the psychiatric report prepared by ██████████ in April 2001 in support of his contention that a separation from the applicant would cause her husband to experience extreme emotional distress. ██████████ indicated that she had three one-hour meetings with the applicant and her husband as well as telephone conversations with the applicant's husband and her attorney. ██████████'s evaluation appears to be based solely on information related to her by the applicant, her husband, and their attorney. There is no evidence that ██████████ or any other mental health practitioner ever treated the applicant's husband, nor did ██████████ recommend any therapy or treatment for his emotional stress. ██████████ wrote that the applicant's husband has an aversion to change and that he depends emotionally on the applicant. ██████████ concludes that the applicant's removal would result in extreme emotional and financial hardship on the applicant's husband, but she did not include details regarding the manner in which the predicted hardship will affect the applicant's husband's ability to carry out his daily activities. The AAO is unable to conclude, based on the record, that the applicant's husband's emotional distress will exceed that which is, unfortunately, common in similar situations.

The burden of proof in this proceeding rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not established that her husband will experience extreme hardship on account of her inadmissibility. The applicant has therefore not sustained her burden of proof, and the appeal is dismissed.

ORDER: The appeal is dismissed.