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U.S. Citizenship
and Immigration
Services

H12

FILE:

Office: SAN FRANCISCO, CALIFORNIA

Date: FEB 01 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 waiver application was denied by the Acting District Director, San Francisco, California, 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 (U.S.) under § 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 admission into the United States by fraud or willful misrepresentation on or about July 29, 1992. The applicant sought to enter the United States using a passport and visa in the name of another individual. The fraud was discovered, however, and the applicant was returned to the Philippines. He subsequently entered the United States without inspection. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel states that the acting district director abused his discretion by failing to thoroughly analyze the facts and evidence in the case. Counsel does not submit new evidence or point out precedent decisions that the acting director should have considered; counsel merely reiterates assertions already made. Counsel maintains that the applicant's wife cannot return with the applicant to her native Philippines, because she does not want to take her U.S. citizen daughter there. Counsel also contends that if the applicant's wife remains in the United States without the applicant, she will suffer severe emotional and financial hardship.

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.

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 on a qualifying family member. 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).

In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen wife. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen stepchild will therefore not be considered in this decision.

The Board of Immigration Appeals ("Board") outlined in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) factors it deemed relevant to determining extreme hardship to a qualifying relative in § 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to 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.

Cervantes-Gonzalez at 565-566. (Citations omitted).

In the present case, the record reflects that the applicant's wife is from the Philippines but has resided in the U.S. for many years. She is gainfully employed as a hairdresser and has an approximately eighteen-year-old U.S. citizen daughter from a prior marriage. According to the record, neither the applicant's wife nor her daughter suffers from any health problem, and there is no impediment to the applicant's wife's continued employment should she decide to remain in the United States.

Counsel asserts that the applicant's wife would suffer emotional hardship if she returns to the Philippines due to the situation in which she would place her daughter. Counsel states that uprooting her daughter at this time in her life would cause the applicant's wife to suffer greatly upon witnessing her daughter's negative experience in the Philippines. The record, however, contains no evidence that the applicant's wife would be obliged to take her daughter with her if she elects to return to the Philippines, or that the applicant's stepdaughter would suffer physical or emotional harm in the event of such a relocation.

Counsel also contends that if the applicant's wife decides to remain in the United States, she will be unable to meet her financial obligations without contributions from the applicant. The record does not establish that the applicant would be unable to contribute financially from the Philippines or that the applicant's wife would be unable to make adjustments necessary to compensate for the loss of the applicant's income. It is noted that 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 states that the applicant's wife would suffer severe psychological consequences due to the applicant's removal. In support of this contention, the record contains, among other statements, two letters, one from psychologist Dr. Diana Cosulich, and another from marriage and family therapist [REDACTED]. The former appears to have held one meeting with the applicant's wife; it is not known how many, if any, personal encounters the latter had with the applicant's wife. Both counselors indicated that the applicant's wife would suffer emotional disruption if the applicant is removed, but neither recommended medical treatment, psychiatric therapy, or even ongoing counseling. The letters do not establish that the applicant's wife would suffer emotional trauma beyond that which is, unfortunately, the normal result of such a separation.

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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.