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U.S. Citizenship
and Immigration
Services

HA

FEB 22 2005

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CALIFORNIA

Date:

IN RE:

[Redacted]

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:

[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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, on November 5, 1999. On August 22, 2000, the Administrative Appeals Office (AAO) dismissed the applicant's appeal and affirmed the denial of the waiver. On September 20, 2001, the AAO reopened the application upon applicant's motion, but affirmed its previous dismissal and the director's denial of the waiver. On October 25, 2001, the applicant filed a second motion to reopen, based on new evidence which consisted of the applicant's discovery that his previous attorney had failed to submit a legal brief with the original filing of the I-601 Application for Waiver of Grounds of Excludability. The motion will be granted, but the AAO's dismissal of the appeal will be affirmed. The waiver application will be denied.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States 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 procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 waiver application accordingly. On motion, counsel states that the applicant's former attorney failed to submit a legal brief, depriving the Service, now Citizenship and Immigration Services (CIS), of the precedent decisions necessary to arrive at a correct decision in this case. Counsel also states that the applicant's former attorney failed to submit evidence establishing extreme hardship to the applicant's spouse. It is noted, however, that in conjunction with the applicant's first motion to reopen, the applicant's former attorney submitted a statement containing legal arguments; the record also contains statements written by the applicant's wife and ex-wife. Counsel's assertion that the applicant's previous attorney did not submit a brief or evidence in support of the extreme hardship claim is unpersuasive. Nevertheless, 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 the applicant made a willful misrepresentation of a material fact by utilizing a passport in another person's name in order to gain entry into the United States On June 19, 1995. A § 212(i) waiver of the bar to admission resulting from violation of § 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. Hardship the alien himself or his children or stepchildren experience upon removal is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship 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).

The new evidence submitted on motion to reopen consists of a psychological report prepared by psychotherapist [REDACTED] MFT. Mr. [REDACTED] apparently based his evaluation on a single two-hour visit on November 16, 2001 with the applicant and his wife. The evaluation relates the applicant's wife's story of three previous failed marriages and the importance the applicant's presence holds for her. Mr. [REDACTED] stated that the applicant's wife displayed symptoms of depression and anxiety, including constant daily headaches. Mr. [REDACTED] recommended that the applicant's wife consult her physician or a psychiatrist in order to obtain psychotropic medication to assist her in dealing with the situation. He also expressed the opinion that the applicant's wife would benefit from psychotherapy. Finally, Mr. [REDACTED] stated that he believed that the applicant's removal would seriously destabilize the applicant's wife's "already vulnerable mental health."

On February 13, 2004, counsel sent a letter to the AAO inquiring about the status of the applicant's motion to reopen. In this latest communication, counsel did not provide any follow-up regarding the applicant's wife's mental condition. The AAO notes, however, that the psychological evaluation did not indicate that the applicant's wife was in danger of becoming incompetent or non-functional, or that she might injure herself or others. The record also does not contain a referral letter, prescription, or any other evidence that the applicant's wife procured medical assistance or any other therapy for her depression and anxiety. Thus, the record does not establish that the applicant's wife would suffer mental or emotional distress beyond that which is normally attendant in similar cases.

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 § 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. 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 AAO acknowledges that the applicant and his wife may be required to alter her living arrangements as a result of the applicant's inadmissibility. The AAO also recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 previous decisions of the AAO and district director will be affirmed.

ORDER: The AAO's and district director's decisions will be affirmed. The waiver will be denied.