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U.S. Citizenship
and Immigration
Services



H2

FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE

Date: JAN 10 2005

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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 District Director, Los Angeles. 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 was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility in order to remain in the United States with her husband and adjust her status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on her behalf by her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's having procured admission to the United States in 1991 using a passport and visa containing an assumed name. *Decision of the District Director* (November 5, 2003) at 2. The applicant does not contest the district director's determination of inadmissibility. Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute. The sole qualifying relative for whose benefit the waiver may be granted in this case is the applicant's husband.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful

permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The Board of Immigration Appeals (BIA) has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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 record reflects that the applicant's husband [REDACTED] a 49-year-old naturalized U.S. citizen born in Manila, Philippines. He married the applicant in 1983, in Manila. He became a lawful permanent resident on December 19, 1984, and naturalized on May 22, 1998. He and the applicant have one daughter, aged 21, who is a lawful permanent resident and lives with them. [REDACTED] states that his father, two brothers, and one sister are U.S. citizens, and that another brother is a lawful permanent resident; however supporting evidence of their immigration status is not present in the record. The applicant's parents are deceased. The record is silent as to the existence of any other family ties of [REDACTED] in the Philippines.

The record reflects that the significant shared household expenses include a mortgage in the amount of \$1900 on an overall balance of over \$330,000; insurance for three cars; and college tuition for the couple's daughter, who the couple does not wish to work. Financial documentation on record shows that the household income for 2002 was \$160,489, approximately 66% of which was contributed by the applicant's employment at two different jobs. [REDACTED] salary alone was approximately \$65,034. Both the applicant and [REDACTED] are skilled as computer programmers, a career [REDACTED] originally pursued in the Philippines. [REDACTED] expresses concerns over his and the applicant's employment prospects in Philippines and prevailing low wages. Country conditions documentation on the record shows that the Philippine economy struggles, despite some recently favorable trends. "[T]he Philippine economy continues to juggle extremely limited financial resources while attempting to meet the needs of a rapidly expanding population and address intensifying demands for the current administration to deliver on its anti-poverty promises. The current high level of government debt, the substantial share of foreign obligations, the emerging risks posed by contingent liabilities, and the worrisome deterioration in tax collection performance over the past 5 years have increased the country's vulnerability to severe external and domestic shocks. Potential foreign investors, as well as tourists, continue to be concerned about law and order, inadequate infrastructure, and governance issues." U.S Department of State, *Background Notes* (October 2003).

The record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if the applicant is refused admission. Rather, the

record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Inability to pursue one's chosen career or reduction in standard of living does not necessarily result in extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.")

The applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate to avoid separation. The applicant has not shown that her husband would face extreme hardship if he relocated to the Philippines with her to avoid separation. Both the applicant and her husband appear to have job skills that would make them more employable than many in the Philippines. Alternatively, [REDACTED] could remain in the United States and at his current employer, with perhaps a diminished standard of living but not deprived of means and not reduced to poverty. In any event, the BIA has held, "[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.