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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:

[REDACTED]

Office: SAN FRANCISCO, CALIFORNIA

Date: MAY 11 2005

IN RE:

Applicant:

[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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 procured admission into the United States in 1994 by presenting a passport in another person's name. The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. She seeks the above waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish extreme hardship to her U.S. citizen husband and denied the application accordingly. On appeal, the applicant states that she neglected to include an affidavit by her husband regarding the hardship he would suffer upon her removal. She submits his affidavit dated September 19, 2002. In his affidavit, the applicant's husband states that he will suffer hardship whether he chooses to remain in the United States or accompany the applicant to the Philippines.

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 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.
- (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, section 274C of the Act, 8 U.S.C. § 1324c was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly “[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act.”

Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including:

- (a) [I]mpersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name . . . See 18 U.S.C. § 1546.

In this case, the applicant admitted that she obtained a fraudulent Philippine passport in an assumed name and used the document to procure admission into the United States in violation of § 212(a)(6)(C). 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. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez*, *supra*, the Board of Immigration Appeals provided a list of factors it 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In this case, the applicant’s qualifying relative is her U.S. citizen spouse. The applicant’s husband writes that he would suffer extreme hardship if the applicant departs the United States, since he will be unable to assume the role of both father and mother to care for their two young children. The applicant’s husband also states that their children, ages four and two, are too young to send to a babysitter. The applicant’s husband contends he will suffer emotionally and physically if he is deprived of the applicant’s affection and companionship. He further notes that if his children accompany the applicant, he will suffer emotional hardship due to the separation from his children. He asserts that the applicant provides for at least 50 per cent of the household income; hence, her absence will cause him to suffer financially.

The applicant’s husband claims, in the alternative, that he cannot relocate to the Philippines, as he does not speak the language of that country, and he will not be able to support his family, given the lower wages in the Philippines. 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.

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his 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, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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.