



U.S. Citizenship
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FILE:



Office: HONOLULU DISTRICT OFFICE

Date:

OCT 19 2005

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 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 Interim District Director, Honolulu, 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse, mother, and children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of Interim District Director*, dated April 8, 2003.

On appeal, counsel for the applicant contends that the applicant's misrepresentation was not material, and thus he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief in Support of Appeal*. Counsel further contends that if the applicant is prohibited from remaining in the United States his spouse and mother will suffer economic and emotional hardship. *Id.*

The record contains a brief from counsel; statements from the applicant, the applicant's wife, the applicant's mother, and the applicant's sons in support of the appeal; a letter from a doctor regarding the health status of the applicant's mother; a letter from an accountant analyzing the financial status of the applicant's family; letters from the applicant's church, employer, and friend attesting to his character and employment; a copy of the deed to the applicant's home; copies of photographs of the applicant and his family; sworn statements from the applicant and his wife in connection with his entry and initial Form I-601 application; a copy of the naturalization certificate of the applicant's wife, and; a copy of the applicant's marriage certificate. 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 in 1995 the applicant entered the United States using the passport of another individual. Thus, the applicant made a willful misrepresentation of a material fact (his identity) in order to

procure entry into the United States. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, counsel asserts that the misrepresentation committed by the applicant was not material, and thus he is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. However, upon inspection for entry to the United States, the applicant's true identity was material to whether he possessed a valid passport and whether he had been properly issued a visa. By misrepresenting his identity to the inspecting officer, the applicant cut off these fundamental lines of inquiry.

Counsel asserts that, under the reasoning of *Matter of K*, 9 I&N Dec. 585, Interim Decision 1198 (BIA 1962), the applicant's entry can be considered an entry without inspection, as he did not reveal his true identity. Counsel suggests that treating the applicant's entry as an entry without inspection removes the applicability of section 212(a)(6)(C)(i) of the Act. However, the applicant was admitted to the United States because he engaged in a material misrepresentation. The fact remains that the applicant did procure entry into the United States by fraud or willful misrepresentation, and thus he is inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel's assertions are not persuasive and the applicant has failed to show that he was erroneously deemed inadmissible.

A section 212(i) waiver of the bar to admission resulting from violation of section 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 experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife and mother. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 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.

On appeal, counsel contends that if the applicant is prohibited from remaining in the United States his U.S. citizen spouse and mother will suffer economic and emotional hardship. *Brief in Support of Appeal*. Counsel states that the applicant's wife has strong ties to the United States, as she has lived in the country since October 1992 and she has two sons, four siblings, her mother, grandchildren, and cousins here. *Id.* at 5-6. The applicant and his wife state that the applicant's wife would not relocate to the Philippines with him should he be compelled to depart the United States. *Statement from Applicant on Appeal* at 3; *Statement from Applicant's Wife* at 2, dated June 11, 2003. The applicant's wife states that she will suffer emotional hardship if she is separated from the applicant. *Statement from Applicant's Wife* at 1-3.

Counsel provides that the applicant's wife will endure economic hardship if the applicant is prohibited from remaining in the United States, as she depends on his financial contribution to pay their mortgage and meet their expenses. *Brief in Support of Appeal* at 8-9. The applicant submits documentation to show that his spouse and family members purchased the family home in Hawaii on May 13, 2003. *Quitclaim Deed*, dated May 13, 2003. Counsel references a report from an accountant that asserts that the applicant's wife would likely lose the family home and suffer additional economic hardship should she be compelled to meet her expenses alone. *Brief in Support of Appeal* at 9; *Report from Accountant Assessing the Financial Status of the Applicant's Family*. The applicant notes that his wife has some education and experience in nursing, yet she would have to complete additional training to be licensed in the United States. *Statement from Applicant on Appeal* at 3. The applicant provides that his wife currently works full-time in the housekeeping department of a hotel in Maui. *Id.*

Counsel provides that the applicant's mother has resided in the United States since approximately 1980, and all of her children are in the country. *Id.* at 5. Counsel indicates that the applicant's mother resides in Hayward, California with one of her sons. *Id.* at 12. The applicant's mother states that her three U.S. citizen daughters also reside in California, and all of them engage in "hospital related" work. *Statement from Applicant's Mother*, dated May 2, 2003. Counsel asserts that the applicant's mother's health is poor, and she would suffer emotional and physical hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal* at 12. The applicant provides that all of his brothers and sisters in the United States attempt to help his mother, and they share the responsibility of caring for her. *Statement from Applicant on Appeal* at 1-2.

Counsel further states that the applicant is in poor health and he will be unable to obtain adequate health care in the Philippines. *Brief in Support of Appeal* at 7. The applicant's wife states that the applicant receives health insurance through her employment. *Statement from Applicant's Wife*, dated June 11, 2003. Counsel further provides that the economy in the Philippines is poor, and the applicant will be unable to find suitable employment. *Brief in Support of Appeal*.

Upon review, the applicant has not established that his wife or mother will experience extreme hardship if he is prohibited from remaining the United States. Counsel references the applicant's spouse's extensive family ties in the United States, and lack of current ties to the Philippines. The statement from the applicant's spouse reflects that she will choose to remain in the United States rather than relocate out of the country with the applicant. The AAO recognizes that the applicant's wife will endure emotional 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.

The applicant has not established that his spouse would endure extreme financial hardship should he depart the United States. The applicant's spouse is currently employed in a full-time position, and she has prior training in nursing that could feasibly be applied to additional employment options in the United States. The AAO acknowledges that the applicant's spouse may be required to make lifestyle changes due to the possible need to sell her home and relocate to more affordable housing. However, the applicant has not shown that his wife will be unable to meet her financial needs in his absence. It is noted that the applicant's spouse purchased their home in Hawaii on May 13, 2003. Yet, the applicant and his spouse were aware that he had been deemed inadmissible as of the date the applicant filed a Form I-601 application, June 7, 1999. Further, they were aware that he had been denied a waiver of inadmissibility as of April 8, 2003. Thus, the applicant's wife could not have reasonably relied on the applicant's continued presence in the United States at the time she purchased the family home. Accordingly, the applicant has not shown that his wife would endure economic difficulty that rises to the level of extreme hardship. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The applicant's mother suggests that she will endure emotional hardship should the applicant be prohibited from remaining in the United States. 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. It is noted that the applicant resides in Hawaii, while his mother resides in California. The applicant's mother resides with one of her sons, and her three daughters also live in California. The record does not support that the applicant's mother spends a significant amount of time with the applicant, such that his relocation outside the United States will substantially impact their visitation. As the applicant's mother has the support of four of her children living with her or in the same state, she will continue to have emotional support in the applicant's absence.

The applicant indicates that he contributes to the economic support of his mother. However, such expenses are not reflected in the accountant's report contained in the record. *Report from Accountant Assessing the Financial Status of the Applicant's Family*. As the applicant's mother resides with one of her sons in California, and she has three other employed U.S. citizen children nearby, the evidence of record suggests that she will continue to have sufficient financial support in the applicant's absence.

The applicant and his spouse reference hardships to their U.S. citizen children, such as the loss of economic support for college expenses. Counsel further discusses hardship to the applicant, such as the lack of comparable medical care and employment opportunity in the Philippines. However, hardship experienced by the applicant or the applicant's children is not probative of the applicant's eligibility for a waiver under section 212(i) of the Act. Section 212(i)(1) of the Act.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife and mother should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 appeal will be dismissed.

ORDER: The appeal is dismissed.