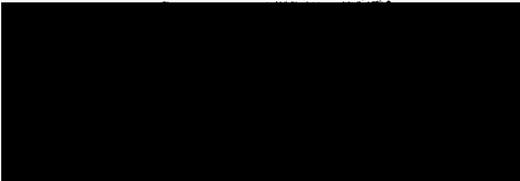




U.S. Citizenship
and Immigration
Services

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FILE:



Office: MANILA

Date: APR 25 2006

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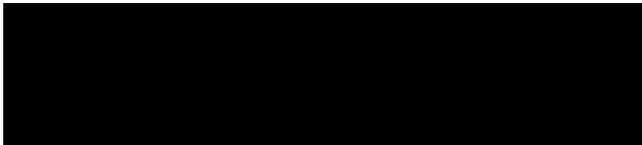
Applicant:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, Manila, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act 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 enter the United States and reside with her U.S. citizen husband.

The acting immigration attaché concluded that the applicant 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 the Acting Immigration Attaché*, dated August 6, 2004.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from entering the United States. *Brief in Support of Appeal*, dated September 3, 2004.

The record contains a brief from counsel in support of the appeal; a supplemental statement from the applicant submitted with Form I-601; a statement from the applicant's husband in support of the Form I-601 application; copies of two separate marriage certificates for the applicant and her husband; a copy of the naturalization certificate of the applicant's husband, and; a copy of the applicant's birth 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 the applicant was married to her husband on April 2, 1984. On September 17, 1984, the applicant's husband entered the United States pursuant to an immigrant visa issued to him based on his representation that he was the unmarried son of a U.S. citizen or permanent resident. The applicant's husband subsequently filed a Form I-130 Petition for Alien Relative on behalf of the applicant, falsely representing that he married the applicant on April 29, 1989. At an interview for an immigrant visa, the applicant represented that she was married on April 29, 1989, and she presented a marriage certificate showing a

marriage date of April 29, 1989. Thus, the applicant presented a fraudulent document and falsely represented her date of marriage ostensibly in order to conceal her husband's prior misrepresentation. As the applicant's eligibility for an immigrant visa was dependent on her husband's immigration status, her misrepresentation was in furtherance of her attempt to procure an immigration benefit for herself. 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), for seeking to procure a visa by fraud or willful misrepresentation of a material fact. The applicant does not contest her inadmissibility on appeal.

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 herself 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 husband. 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.

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).

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from entering the United States. *Brief in Support of Appeal*, dated September 3, 2004. Counsel explains that the applicant's husband has resided in the United States for more than 20 years while maintaining a long distance relationship with the applicant and his two children in the Philippines. *Id.* at 2. Counsel states that the applicant's husband has developed a career in the United States which he cannot continue effectively in the Philippines. *Id.* at 6. Counsel asserts that a denial of the applicant's waiver application will compel her husband to choose between his home of 20 years in the United States and his family of 20 years in the Philippines. *Id.* The applicant stated that her husband has made extensive trips to the Philippines, and that he supports her and her children financially. *Supplement to Form I-601*, dated May 19, 2004. The applicant's husband provided that he has traveled to the Philippines approximately 20 times in the last 20 years in order to be with the applicant and their children. *Statement of Applicant's Husband in Support of Form I-601 Application*, dated April 2004.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from entering the United States. The AAO recognizes that the applicant's husband will

endure emotional consequences as a result of separation from the applicant should he remain in the United States. The applicant's husband has communicated that he wishes for the applicant to reside with him in the United States, and that maintaining their long-distance relationship has caused significant hardship. Yet, the applicant has not shown that continued separation will cause her husband emotional hardship that is greater than that typically experienced by the family members of those deemed inadmissible. 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. Thus, the applicant has not shown that her husband's emotional hardship will rise to the level of extreme hardship.

The applicant's husband has worked in the United States for 20 years, while supporting his wife and children in the Philippines. Thus, the record shows that the applicant's husband is capable of meeting his financial needs in the applicant's absence.

It is noted that the applicant's husband may return to the Philippines to be with the applicant and his children if he chooses. As a native of the Philippines with continuing contacts there, it is evident that he would not be compelled to face the challenges of adapting to an unfamiliar culture and language. Counsel explains that the applicant's husband would be unable to find comparable employment in the Philippines. However, the applicant has not provided documentation to show that the Philippines does not offer employment for dialysis technicians such as her husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has not established that returning to the Philippines constitutes extreme hardship for her husband. Further, as a U.S. citizen, the applicant's husband is not required to reside outside the United States as a result of the applicant's inadmissibility.

All instances of hardship presented by the applicant have been considered in sum. The AAO acknowledges that the applicant's husband will face emotional challenges should the applicant be prohibited from entering the United States. Yet, based on the foregoing, the instances of hardship that will be experienced by the applicant's husband, 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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.