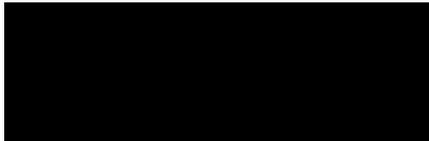




U.S. Citizenship
and Immigration
Services

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112

FILE: [REDACTED] Office: CHICAGO

Date: **AUG 08 2006**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, 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 pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The district director 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 11, 2004.

On appeal, counsel for the applicant contends that the district director made erroneous findings of fact in denying the application. *Statement from Counsel in Attachment to Form I-290B*, dated September 10, 2004. Counsel further asserts that the district director failed to give adequate consideration of the applicant's spouse's health condition. *Id.*

The record contains a brief from counsel; a statement from counsel on an attachment to Form I-290B; evidence of the applicant's wife's employment; a copy of the applicant's mother-in-law's death certificate; statements from the applicant's wife; copies of medical records and prescriptions for the applicant's wife; copies of tax records for the applicant's wife; documentation regarding conditions in the Philippines; information on diabetes and stroke; a statement from the applicant regarding his contact with his son; a brief from counsel in support of the initial Form I-601 application; a certificate reflecting that the applicant completed nursing training; a letter from the applicant's pastor; a copy of the applicant's wife's U.S. passport; a copy of the applicant's marriage certificate; a copy of the applicant's birth certificate, and; documentation relating to the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part, that:

- (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . of subsection (a)(2) . . . if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or
- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [now the Secretary of Homeland Security (Secretary)] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record reflects that the applicant has been convicted of three crimes, including: assault in 1989; battery in 1992, and; retail theft in 1992. Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The applicant does not contest his inadmissibility on appeal.

As two of the applicant’s crimes were committed less than 15 years ago, he is not eligible for consideration under section 212(h)(1)(A) of the Act. Thus, the applicant requires a waiver under section 212(h)(1)(B) of the Act.

The AAO notes that section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s U.S. citizen wife. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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, the applicant's wife states that she suffered a mild stroke in February 2003 that has left her unable to perform her work or prior activities. *Statement from Applicant's Wife on Appeal* at 1, dated October 4, 2004. She provided that she has trouble lifting things, bending down to pick things up, pushing things, going to the bathroom, and moving around. *Id.* She indicates that she has fear of having another attack that may prove fatal. *Id.* She further states that she suffers from diabetes and hypertension, and she takes nine different medications. *Id.* She provides that she has had to cut back her working hours, and that her salary dropped to almost half of what she previously earned. *Id.* She states that she lacks sufficient income to hire a nurse to assist her. *Id.* The applicant's wife indicates that her mother died on July 20, 2002, and thus her mother is not available to help her. *Id.* She indicates that her daughter does not help her with her health problems, and her daughter lacks knowledge to do so. *Id.* She provides that the applicant is the only person capable of assisting her, as he has nursing training and he has strength to help her with her mobility problems. *Id.* at 1-2.

The applicant submitted medical records for his wife that reflect that she was hospitalized for various conditions between 2000 and 2004. *Letter from St. Elizabeth Hospital; Medical Facility Database Printouts*, various dates from October 9, 2000 to March 4, 2004. The records list conditions such as an abnormal fatty liver, symptoms relating to diabetes, recurrent atrial fibrillation, a cyst on her left eye, and a deviated septum. *Id.* The applicant provided a letter from [REDACTED] attests that he is treating the applicant's wife for high-risk type 2 diabetes mellitus compounded by stage II hypertension, hyperlipidemia, paroxysmal atrial fibrillation and cerebro-vascular insufficiency with transient ischemic attacks and small infarct. *Letter from [REDACTED]* dated October 7, 2004. [REDACTED] expressed his opinion that the applicant's wife is at risk for coronary and additional cerebro-vascular events. *Id.*

The applicant's wife asserts that she will be unable to meet her financial needs if the applicant returns to the Philippines. *Id.* at 2. She indicates that the applicant's income accounts for 25% of their household income. *Id.* The applicant submitted a document from his wife's employer indicating that she was in an 80% appointment with annual compensation of \$64,396 as of October 8, 2004. *Letter from The University of Illinois at Chicago*, dated October 8, 2004.

The applicant's wife provides that she will suffer emotionally if she is separated from the applicant. *Id.* at 2.

The applicant's wife states that she will experience hardship if she relocates to the Philippines with the applicant. *Id.* at 3. She explains that she would lose the support of her friends and family in the United States. *Id.* She further states that she would lose her employment and related benefits, medical insurance, and financial certainty. *Id.* The applicant's wife expresses concern regarding her safety in the Philippines, and she cites reports that reflect that crime is high and there is a threat of terrorist acts targeting Americans. *Id.* She indicates that she would have limited employment opportunities in the Philippines. *Id.* She notes that she has resided in the United States since 1971, and she is fully integrated into American culture. *Id.* She

contends that the fact that she is in middle age further lessens her ability to establish a new life in another country. *Id.* at 4. She expresses concern for the quality of healthcare in the Philippines, and provides that she will be subjected to health risks such as outbreaks of disease, air pollution, congestion, unsafe food and water, and a drastic change in weather. *Id.*

Counsel contends that the district director made erroneous findings of fact in denying the application. *Statement from Counsel in Attachment to Form I-290B*, dated September 10, 2004. Counsel asserts that the district director failed to recognize the severity of the applicant's wife's health conditions. *Id.* Counsel contends that the district director erroneously determined that the applicant's wife can hire a nurse to assist her in the applicant's absence. *Id.* Counsel notes that the applicant's mother-in-law is deceased, and thus she is not available to assist the applicant's wife, contrary to the assertion of the district director. *Id.* Counsel explains that the applicant's daughter-in-law has a family of her own, and thus she is unavailable to assist the applicant's wife. *Id.* Counsel asserts that the applicant's wife's health problems would render her emotional isolation more severe should she be separated from the applicant. *Brief in Support of Appeal* at 2, dated October 5, 2004.

Counsel highlights that the applicant's wife has endured a reduction in her income since she suffered a stroke, and that she would suffer economic hardship without the applicant's financial assistance. *Id.* at 4-5. Counsel states that the applicant's wife would be unable to afford nursing care in the applicant's absence. *Id.* at 7.

Counsel asserts that, when considered in aggregate, the hardships to the applicant's wife, should the applicant be compelled to depart the United States, constitute extreme hardship. *Id.* at 8.

Counsel contends that the applicant no longer has ties to the Philippines. *Id.* at 3. Counsel asserts that poor conditions in the Philippines would make it difficult for the applicant to secure employment, and his safety would be at risk. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant will endure if he departs. However, hardship to the applicant is not a relevant concern in the present matter. Section 212(h)(1)(B) of the Act. While the AAO acknowledges that the applicant will bear significant consequences if his waiver application is denied, only hardship to the applicant's wife may be properly considered in this section 212(h)(1)(B) waiver proceeding.

The applicant has failed to show that his wife will suffer extreme hardship should he be prohibited from remaining in the United States. The record contains documentation and explanation to reflect that the applicant's wife has numerous physical health problems. The AAO acknowledges that that applicant's wife requires regular care from medical professionals. The AAO further acknowledges that health care in the Philippines does not meet that standards of that available in the United States, and that cash payment is often required. It is understood that the applicant's wife would be compelled to relinquish her employment in the United States should she relocate to the Philippines, and she would face seeking new employment in a stagnant economy. Her age and health would likely serve as impediments to securing a new position. The applicant has not provided a clear account of his wife's economic resources, such as documentation of savings and checking accounts, real estate, retirement funds or other investments. Thus, the AAO is unable to

assess whether she would be able to afford what medical care is available in the Philippines. Yet, the applicant's wife would bear income loss and the expense of relocation, which would impact her financial means and ability to afford medical services abroad. The AAO finds that relocation to the Philippines poses a significant health risk for the applicant's wife.

The record presents other elements of hardship to the applicant's wife should she relocate to the Philippines, including separation from her friends and family members in the United States after over 30 years of residence in the country. The applicant's wife would face the stress of residing in a country with political uncertainty and security concerns in certain areas. As discussed above, the applicant's wife would lose her current employment and income, causing economic hardship as she attempts to secure new employment in a weak economy.

In summary, the applicant has shown that his wife would face extreme hardship if she relocates to the Philippines, largely based on her physical health status and need for quality health care. However, pursuant to section 212(h)(1)(B) of the Act, in order to establish eligibility for a waiver, an applicant must show that denial of the application "*would* result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien." Section 212(h)(1)(B) of the Act (emphasis added). Accordingly, the applicant must show that all of his wife's options constitute extreme hardship. If the applicant's wife would experience extreme hardship if she relocated abroad, yet she would not experience extreme hardship if she remained in the United States, the applicant would have failed to show that denial of his application "*would* result in extreme hardship." In such circumstances, should the applicant's wife relocate abroad, it would be her personal choice to endure greater hardship. Thus, in adjudicating an application for a waiver under section 212(h)(1)(B) of the Act, Citizenship and Immigration Services (CIS) must consider all hardships to qualifying relatives relating to relocating abroad and remaining in the United States.

The applicant has not shown that his wife will experience extreme hardship if she remains in the United States. As discussed above, the applicant's wife's physical health is a serious concern in this matter. Yet, the record reflects that she receives regular care from medical professionals in the United States. The applicant has not shown that his presence is required in order for his wife to continue to receive this care. The applicant's wife reports that the applicant's earnings account for approximately 25% of their household income. The record shows that the applicant's wife was employed at an annual salary of \$64,396 as of October 8, 2004, an income above the 2006 poverty line for a family of two, evaluated as \$13,200. *See Form I-864P, Poverty Guidelines*. Thus, she has significant resources to fund her required health care. The applicant's wife comments that she would lose her employment and health insurance if she relocates to the Philippines, thus she implies that her health coverage is tied to her employment and not the applicant's. Accordingly, the record suggests that the applicant's wife would continue to have health coverage and access to quality medical care if she remains in the United States without the applicant.

Counsel suggests that the applicant's wife would suffer significant economic hardship if the applicant departs the United States. Yet, as noted above, the applicant's wife earns the majority of her household's income at a rate over four times the poverty line for a family of two. The applicant has not provided a clear account of his household's monthly expenses or economic resources beyond compensation from employment. Thus, the AAO is unable to fully assess the financial impact the applicant's departure would have on his wife. 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)). While the applicant's wife may be compelled to modify her standard of living, such as changing her housing, the applicant has failed to show that she would suffer serious economic detriment.

The record contains references to the fact that the applicant's wife suffered a mild stroke. However, the applicant has not submitted documentation from a medical professional that fully describes his wife's stroke, the progress of her recovery, or the long-term effect it has had on her physical state. Again, 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. at 165. The AAO acknowledges that the applicant's wife is employed at an 80% capacity. Yet, the fact that she is able to work in a nursing position on an 80% schedule reflects that she is capable of performing substantial tasks. The applicant has not shown that she in fact relies on his assistance, or that she is unable to meet her daily needs alone.

The applicant's wife provides that she will suffer emotionally if she is separated from the applicant. However, the record contains little explanation regarding the applicant's relationship with his wife, their closeness, or the prospective emotional consequences should they be separated. The applicant has not established that his wife will suffer emotional consequences of separation that are more severe than those commonly expected of the family members of those who are deported. U.S. court decisions have 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.

All prospective hardships for the applicant's wife, should she remain in the United States without the applicant, have been considered separately and in aggregate. Based on the foregoing, the applicant has not shown that, should he be prohibited from remaining in the United States, his wife will suffer emotional hardship that is unusual or beyond that which would normally be expected upon deportation. The applicant has not established that his spouse's health status will result in extreme hardship due to his inadmissibility. While the applicant's wife would experience extreme hardship should she relocate to the Philippines, as a U.S. citizen she is not required to do so. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.