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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES

Date: **DEC 26 2006**

IN RE:



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: Self-represented

**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 District Director, Los Angeles, California, denied the application for a waiver. The matter 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 is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her spouse.

The 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 15, 2005.

The record reflects that, on September 25, 1992, the applicant was convicted of forgery in violation of section 470A of the California Penal Code (CPC). The applicant was sentenced to 365 days in jail. On August 18, 1993, the applicant was convicted of grand theft of property in violation of section 487 of the CPC. The applicant was sentenced to 24 months of probation and 5 days in jail. On January 25, 1996, the applicant was convicted of passing a fictitious check in violation of section 476 of the CPC and burglary in violation of section 459 of the CPC. The applicant was sentenced to 36 months probation and 120 days in jail. On October 2, 1996, the applicant was convicted of forgery of a fictitious check in violation of section 470 of the CPC. The applicant was sentenced to 3 years of probation and 180 days in jail. On January 7, 2004, the applicant was convicted of theft of property in violation of section 484(a) of the CPC. The applicant was sentenced to 24 months of probation and one day in jail.

On February 10, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, the applicant contends that her spouse would suffer extreme hardship if the she were denied a waiver. *See Form I-290B*, dated May 14, 2005. In support of the appeal, the applicant submitted only the above-referenced Form I-290B. The entire record was reviewed and considered in rendering a decision in this case.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

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

- (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 [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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and convictions for forgery, grand theft, passing a fictitious check, forgery of a fictitious check and theft of property, crimes involving moral turpitude. The applicant does not contest the district director's finding of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(h) 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, parent, son or daughter of the applicant.

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 at 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. 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 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, on March 14, 2002, the applicant married her U.S. citizen spouse, [REDACTED]. The applicant and [REDACTED] have no children. The record reflects further that the applicant and [REDACTED] are in their 30's, and there is no evidence that [REDACTED] has any health concerns.

The applicant contends that [REDACTED] will suffer extreme hardship if he were to remain in the United States without her because he would be without her, their love affair is so binding and against all odds, she provides him with financial and emotional support, they are partners in the house that they own and in their daily lives, and her husband would be caused extreme discomfort and distress, both financially and emotionally, if she were not in the United States. [REDACTED] in his affidavit, states that the applicant is his love and is what keeps

him forging on to make their lives as full as possible, when he met her he began to unknowingly dream, hope and grow, she has his never ending love and devotion, and she keeps him whole.

The record reflects that, in 2000, [REDACTED] earned approximately \$70,000. The record shows that, even without assistance from the applicant, [REDACTED] earns sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support himself without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] may be separated from the woman he loves and who makes him whole, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

The applicant and [REDACTED], in their affidavits, do not contend that [REDACTED] would suffer extreme hardship if he accompanied the applicant to the Philippines. The AAO, therefore, is unable to find that [REDACTED] would suffer extreme hardship if he were to accompany the applicant to the Philippines. Additionally, the AAO notes that, even if the applicant had established the applicant's spouse would suffer extreme hardship by accompanying the applicant to the Philippines, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] 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 nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme hardship*," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). Further, demonstrated 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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 an application for waiver of grounds of inadmissibility under section 212(h) 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.