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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date:

JUL 26 2008

IN RE:

[REDACTED]

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:

[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, Chief  
Administrative Appeals Office

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**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, CA, 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 (U.S.) 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 having procured admission into the United States by fraud or willful misrepresentation on March 30, 1999. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that his U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved with the removal of a family member. The application was denied accordingly. *Decision of the District Director*, dated May 6, 2004.

On appeal, counsel states that the district director erred in disregarding evidence submitted by the applicant and by not considering the factor's in the applicant's case cumulatively. *Form I290B*, June 4, 2004.

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 indicates that on March 30, 1999 the applicant presented a fraudulent transit without visa (TWOV) bearing the name [REDACTED] to U.S. immigration authorities for entry into the United States before boarding a plane from San Francisco to Canada. Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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. Hardship the alien himself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. 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 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Philippines or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Philippines. The applicant's spouse states that relocating to the Philippines would cause her financial, emotional, safety and health problems. The applicant's spouse's entire family are United States citizens and the applicant's spouse moved to the United States at 13 years old. The applicant's spouse suffers from diabetes and asthma. She submitted various medical documents to support her health condition claims. She also stated in her declaration that if she relocated to the Philippines she would lose her health insurance and retirement benefits. The applicant submitted various country reports and newspaper articles to establish that the Philippines suffers from poverty, unemployment, limited access to health care, and public safety problems. The applicant's spouse asserts that she will not be able to find employment to support herself nor will she be able to find adequate health care for her asthma and diabetes. Taking into consideration the country conditions in the Philippines combined with the medical condition of the applicant's spouse and family separation, the applicant has established that his spouse will suffer extreme hardship as a result of relocating to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse asserts that she will suffer emotionally and financially as a result of being separated by the applicant. The applicant submitted a psychological report for his spouse from [REDACTED] states that the applicant's spouse is suffering from Major Depressive Disorder and he recommends that she see a psychiatrist and consider anti-depressant medication for treatment of this depression. In addition, [REDACTED] states that the applicant's spouse is more vulnerable to depression because of a previous episode of Dysthymic Disorder, a low-grade long-term depression, when she first moved to the United States. He feels that separating her from the applicant will have a devastating effect on her mental health. Although the input of any mental health professional is respected and valuable, the AAO notes that the report submitted is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the report submitted, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the reports value in determining extreme hardship.

In addition, the applicant's spouse states that she makes \$1,100 per month and that she will not be able to pay for all of her monthly expenses without the applicant. The applicant's spouse submitted financial documents in support of these claims. The AAO notes that the applicant's spouse may have to change her lifestyle as a result of the applicant's removal. However, these hardships are typical in a situation where a family member is removed from the United States and do not rise to the level of extreme. Therefore, the applicant has not established that his spouse would suffer extreme hardship as a result of his removal.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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(i) 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.