



U.S. Citizenship
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Services

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[REDACTED]

FILE:

Office: LOS ANGELES, CA (SANTA ANA)

Date: JUN 05 2006

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

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 determined to be inadmissible to the United States pursuant to 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 to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and child.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 27, 2004.

On appeal, counsel contends that the decision of Citizenship and Immigration Services (CIS) gave only cursory review of the facts presented in the application. Counsel asserts that CIS also erred in overlooking that hardship to the applicant's child might contribute to the hardship suffered by a qualifying relative, in this instance the applicant's spouse. Counsel indicates that the applicant's spouse would suffer "enormous hardship" if his daughter had to return to the Philippines with her mother. *Form I-290B*, dated November 19, 2004. In support of these assertions, counsel submits a brief; a supplemental declaration of the applicant's spouse; a copy of the certificate of naturalization of the applicant's spouse; a copy of the marriage certificate of the applicant and her spouse; a copy of the United States birth certificate of the applicant's child; two letters from a medical doctor; documents evidencing the scholastic achievement of the applicant's child; a mortgage statement for the applicant and her spouse and a copy of a Philippine Labor Force Survey. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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, on October 15, 1991, the applicant presented a Philippine passport and United States B-2 visa in the name of another individual to United States Government officials in order to obtain admission to the United States.

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. 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 that suffered by 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 Board 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.

Counsel contends that the applicant's spouse would suffer extreme hardship if he relocated to the Philippines in order to remain with the applicant. Counsel indicates that the applicant's spouse has resided in the United States for over 15 years, is employed as a cook and would have no prospects of procuring employment in the Philippines because wages are low and jobs are difficult to obtain in the applicant's native country. Counsel states that the applicant's spouse has not attended college and that even the well educated have difficulty obtaining employment in the Philippines. *Brief in Support of Appeal*, 6, undated. In support of these assertions, counsel submits a Philippine Labor Force Survey, dated April 2004 reflecting an unemployment rate of 13.7%. Counsel further contends that the applicant's spouse provides care to his parents in the United States. *Id.* at 9. Counsel states that the applicant's spouse cannot relocate his parents to the Philippines owing to their advanced age and the lack of comparable medical care in the applicant's native country. *Id.* at 9-10. Counsel indicates that the parents of the applicant's spouse have suffered the loss of two of their children to disease and lack of adequate medical care and therefore separation from the applicant's spouse would be tragic for them. *Id.* at 10. Counsel further asserts that the applicant's spouse wants his daughter to be educated in the United States, her country of birth. *Id.* at 8.

While relocation to the Philippines may impose extreme hardship on the applicant's spouse, the record fails to establish that the applicant's spouse would suffer extreme hardship if he remains in the United States in order to provide care to his parents, maintain employment in his adoptive country, and retain access to educational opportunities for his daughter. Counsel contends that the applicant's spouse would face hardship if he had to provide care to his parents in the absence of the applicant. *Id.* at 9 (stating that if the applicant's spouse were to remain in the United States in the absence of the applicant, "he would do so without the mental, financial, or spiritual resources to provide for the long hours of care his elderly parent's [sic] require."). The AAO notes, however, that the record fails to establish that the parents of the applicant's spouse require "long hours

of care.” The record reflects that the parents of the applicant’s spouse suffer from hypertensive heart disease and that the father of the applicant’s spouse additionally suffers from gout, arthritic pain and Peptic ulcer disease. See *Letters from [REDACTED]*, dated November 9, 2004. The physician treating the parents of the applicant’s spouse indicates that his patients are prescribed medications for these ailments and are both in “fairly good health.” *Id.* As such, the submitted information does not demonstrate that the parents of the applicant’s spouse require a level of care that the applicant’s spouse is unable to provide in the absence of the applicant.

Counsel further contends that the applicant’s spouse will face hardship as a result of the separation of the applicant from the couple’s daughter. Counsel states that the applicant’s spouse is fearful that his daughter will feel loss in the absence of her mother and wonders how the child will be cared for when he is at work. *Brief in Support of Appeal* at 11. The AAO acknowledges that separation from family members may be painful and difficult, however, counsel fails to establish that the hardship evidenced in the instant application is “extreme” in comparison to the hardship suffered by other individuals and families as a result of inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the absence of substantiating documentation, the assertions of counsel are merely speculative.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant’s spouse would endure a certain amount of hardship as a result of relocation or due to separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 she 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.



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ORDER: The appeal is dismissed.