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U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date: MAR 20 2006

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, CA denied the waiver application. 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. He was found inadmissible to the United States pursuant to both sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and 8 U.S.C. § 1182(a)(2)(A)(i)(I). The applicant gained admission to the United States by using a false visa and representing himself as the person identified on the visa. He also was convicted of burglary, possession of a false drivers license/ID with intent to commit forgery. The applicant is the spouse of a U.S. citizen and father of three U.S. citizen children. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and children.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director* (August 6, 2004).

On appeal, counsel asserts that the applicant's wife and children would suffer extreme hardship if he were removed.

The entire record was reviewed in rendering this decision.

INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i) provides:

In general.—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.

INA § 212(a)(2) states in pertinent part:

(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.

The applicant is not contesting the district director's determination of inadmissibility.

INA § 212(i), 8 U.S.C. § 1182(i)(1), provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

INA § 212(h) of the Act provides in pertinent part:

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

. . . .

(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 [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

In order to gain admission to the United States, the applicant is required to obtain a waiver for each violation indicated above. Since qualification for a waiver under INA § 212(i) would also qualify the applicant for a waiver under INA § 212(h), this decision will evaluate the merits of the INA § 212(i) waiver application.

As stated, establishing eligibility for an INA § 212(i) waiver is dependent first upon a showing that the applicant’s inadmissibility imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. The degree of hardship that the applicant or his children would experience is irrelevant to the extreme hardship determination. The only relevant hardship in the present case is that suffered by the applicant's wife. Therefore the evidence will be evaluated based upon whether in the aggregate, it establishes that the applicant’s wife would face extreme hardship if the applicant were removed. If extreme hardship to the applicant’s wife 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 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, 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 pursuant to section 212(i) of the Act. 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).

Counsel contends that the applicant's wife depends upon him for financial support. *Brief in Support of Appeal*, p.2. A document from the County of Los Angeles Department of Health Services submitted by the applicant indicates that the applicant's wife was employed as a licensed vocational nurse and was earning \$2913.00 per month in 2002. The document further indicates that she was hired by that organization in 1989. A copy of an automatic deposit receipt also submitted by the applicant indicates that the applicant's wife had earned about \$31,000.00 in 2002 as of November 15, 2002. Claims by counsel in the brief that the applicant's wife would be forced to seek public benefits (*Brief in Support of Appeal*, at p.3, *Attorney Letter in Support of Waiver Application*, p.1) are not supported. There is no evidence of the applicant's income beyond an unsupported statement by his attorney that the applicant was earning close to \$40,000.00 per year. *Attorney Letter in Support of Waiver Application*, p.2. A copy of a joint federal income tax return filed by the applicant and his wife in 2001 indicates that the couple earned \$32,691.00 in wages, salaries and tips and \$5,000.00 in commissions. No business income is indicated. The applicant also indicated that he was unemployed on the G-325A that he submitted with his application for Adjustment of Status. The G-325A was signed on April 25, 2001. While there is nothing in the record to indicate what percentage of the 2002 income was earned by the applicant, given that his wife had been working in the same job since 1989 and was earning \$2913.00 per month (or if multiplied by 12 months \$34,956.00 annually) in 2001 and that the applicant was unemployed in 2001, there is no basis for finding that removal of the applicant would cause great economic hardship to his wife.

Counsel states, without providing any supporting evidence, that relocating the family to the Philippines would be emotionally traumatic to the applicant's wife and children. *Brief at 3*. Further, the applicant and his wife would have great difficulty finding gainful employment in the Philippines. *Brief at 3*. Even if these unsupported assertions are correct, since the applicant's wife is a naturalized citizen of the United States she is not compelled to travel to the Philippines with her husband if he is removed. Counsel also states that if the applicant is removed, the applicant's wife "would be forced to stay behind in the U.S. to raise her three children and support them by herself..." *Brief at 3*. As indicated in the preceding paragraph, the evidence does not indicate that the applicant's husband is providing financial support for his family. Her oldest son is now twenty years old, legally an adult. There is nothing in the record to indicate that the applicant's adult son would be unable to find gainful employment in the United States. There also is nothing in the record to indicate that he requires more care than the typical young adult would require. While the applicant's other two children are younger, there is no evidence to indicate that they have physical or psychological difficulties or otherwise require their father's presence to survive, or that the applicant's wife is incapable of caring for them on her own.

The applicant's wife submitted a letter in support of his application for waiver indicating that the applicant is a good, loving and responsive father and a "close to perfect" husband. *Letter of* [REDACTED] February 12, 2002. The contributions of a loving father and a supportive husband to the well-being and future of his spouse should not be minimized. However, to demonstrate that the applicant's removal would cause his wife extreme hardship, there must be a showing of something more than that the applicant is supportive and loving.

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 wife would face extreme hardship if the applicant were removed. Rather, the record demonstrates that she will face no greater hardship than the expected, disruptions,

inconveniences, and difficulties arising whenever a spouse is removed from the United States. To meet the standard in INA § 212(i), the hardship must 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1182(i).

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