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U.S. Department of Homeland Security
20 Mass. Ave., N.W. Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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Hr

FILE:

Office: LOS ANGELES

Date: MAY 19 2006

IN RE:



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:



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 cursive script, appearing to read "Robert P. Wiemann".

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 who was found to be inadmissible to the United States 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 attempting to gain admission to the United States with a false passport. The applicant is married to a United States citizen and 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 U.S. citizen husband and child and lawful permanent resident parents.

The 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*, August 28, 2004.

On appeal, the counsel contends that the director did not consider the hardship that the applicant's removal would cause to her parents and that her removal would also cause extreme physical, emotional and financial hardship to her husband.

In support of these assertions on appeal, counsel submitted a brief, medical information regarding the applicant's father, copies of the resident alien cards of the applicant's parents, declarations from each of the applicant's parents, birth certificate of the applicant's daughter, psychological evaluation of the applicant's husband and financial information regarding the applicant and her husband. The entire record, including the information submitted with the appeal, as well as the documents created and submitted in regard to the application for waiver application for adjustment of status and petition for alien relative has been reviewed in reaching this decision.

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 the applicant presented a passport with a false identity in an attempt to gain admission into the United States on May 24, 1997. Inadmissibility is not contested.

A section 212(i) waiver of inadmissibility resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon the applicant establishing eligibility for the waiver by demonstrating that the inadmissibility causes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon removal is irrelevant to the eligibility determination. In the instant matter, the applicant must demonstrate that her inadmissibility would cause extreme hardship to her U.S. citizen spouse or one of her lawful permanent resident parents. If extreme hardship is established, it is but one favorable factor to be considered in determining whether Secretary should exercise his discretion favorably for the applicant. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors relevant in determining whether an alien has established extreme hardship. 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.

The applicant's citizen husband was naturalized on May 26, 2000. The record indicates that he last lived in the Philippines in 1991, when he was eighteen years old. He received his degree in the United States. His family is in the United States. Neither he nor his wife has close family ties in the Philippines. *Affidavit of* [REDACTED], September 24, 2004. The applicant and her husband were married on July 8, 2000. They have a U.S. citizen daughter born in January 2002. The applicant's husband earned about \$41,000.00 in 2003 according to a copy of his W-2 and earnings summary submitted with his application for waiver. The applicant was earning \$10.80 per hour in 2004 according to a statement submitted by her employer. The combined income of the couple is about \$60,000.00 per year. *Affidavit of* [REDACTED] at 4. The two share expenses and care responsibilities for their daughter. The applicant's husband worries about the economic conditions that his wife would face in the Philippines, worries about the effect that separation from her would have upon him, worries that he would not be able to care for his daughter in the United States and would not be able to support his family if he moved to the Philippines with them. *Mental Status Evaluation*, [REDACTED], September 23, 2004. The applicant's husband suffers from symptoms of depression, difficulty sleeping, loss of energy, feelings of worthlessness, difficulty concentrating and mood swings that stem from his wife's threatened removal. *Mental Status Evaluation*, at 3. These feelings are likely to continue until the "originating trauma," the threat of removal, is resolved. *Mental Status Evaluation*, at 4.

The applicant's parents live close to her. Her mother is aged 72 and her father 71. There is no indication what ties her parents still have to the Philippines although they were born and married there and presumably speak the language. Her father is under medical treatment in the United States for several chronic ailments. Her father indicates that he would be unable to afford necessary medical care in the Philippines and that travel to the Philippines would be very difficult given his various ailments. *Affidavit of* [REDACTED], September 24, 2004. The applicant provides care for her parents, taking her father to doctor's appointments, ensuring that he takes his medicine, and taking both parents on errands such as shopping and trips to the senior citizen center. She also assists with household chores. They rely on their daughter extensively and are emotionally close to her. Both parents worry about the effect that the applicant's removal would have on

them, as well as the effect it would have on their granddaughter. *Affidavit of* [REDACTED] also, *Affidavit of* [REDACTED], September 24, 2004.

When considered in the aggregate, the difficulties that face the applicant's husband and parents do not amount to extreme hardship. Although there has been a strong showing that the applicant is relied upon by her family and that her removal will cause emotional and financial difficulties, there has not been a showing that either the applicant's husband or her parents would experience hardship that is unusual when compared to what would be experienced by other families facing the removal of a family member. The applicant's husband would suffer financially if his wife is removed but he is well educated and earns over \$40,000 per year. He does not rely upon his wife to survive financially. The applicant's husband worries about how he would care for his daughter without his wife, but there has been no showing that he would be unable to do so, as many other single parents have managed to do. There is no doubt that it would be more difficult and more of a financial burden to make care arrangements but the increased burden would not be extreme. The applicant's parents are older and rely on her extensively, but the record does not show that the care that she provides is the only alternative for her parents. Other family members live in the United States. There are agencies that provide medical and other care for the elderly in the United States. Conditions in the Philippines are difficult. The applicant's husband would likely have difficulty finding work there. It has not been established that the applicant's husband could not support the family in the Philippines. While not minimizing the difficulties that the applicant's husband and parents would endure if the applicant were removed, there has been no showing that their situation is unusual or different in any significant degree from the situation that any family member would face if another family member were removed.

A review of the record in its totality reflects that the applicant has failed to show that her U.S. citizen spouse or lawful resident parents would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.