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U.S. Citizenship
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FILE:

Office: LOS ANGELES (SANTA ANA)

Date: **NOV 03 2008**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (the 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.

Robert P. Wiemann, Chief
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, [REDACTED] (Mr. [REDACTED]), is a native and citizen of the Philippines who entered the United States in October 1995, using a fraudulent passport, and applied for adjustment of status on July 8, 2003. The applicant was found to be inadmissible under section 212(a)(6)(C)(i), 8 U.S.C. § 1182(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. In order to remain in the United States with his U.S. citizen (USC) wife, [REDACTED] (Mrs. [REDACTED]) and their USC child, the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The record reflects that Mr. [REDACTED] entered the United States with a passport that had a name that was not his. As a result of this misrepresentation, the District Director found him to be inadmissible to the United States. *District Director's Decision*, dated February 15, 2005. The District Director also found that the applicant 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). *Id.*

On appeal, counsel submits a brief and additional documentation. The record includes the following: a hardship statement from Mrs. [REDACTED] dated August 16, 2004; Mrs. [REDACTED] naturalization certificate; proof of citizenship of their USC child [REDACTED], age 2; the couple's marriage certificate; photos of the family; proof of monthly expenses, including car payment, utilities, and insurance; proof of home ownership; a U.S. State Department "Public Announcement" travel warning for the Philippines dated August 17, 2004; and income tax records from 2000 to 2002. The AAO reviewed the record in its entirety before reaching its decision.

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.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission would result in extreme hardship to the USC or legal permanent resident spouse or parent of the applicant. Hardship to the applicant himself is not considered under the statute. In addition, hardship to his USC child can only be considered insofar as it may affect his qualifying relative, in this case, the applicant's USC wife.

If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also 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 applicant 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 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.

Counsel asserts that Mrs. ██████ cannot go live in the Philippines because her entire family resides in the United States and that she is very close to her family and could not imagine living without their constant love and support. Counsel, however, does not submit any documentation relating to Mrs. ██████ extended family, such as proof of their immigration status in the United States, or statements from them regarding their relationship with Mrs. ██████.

Counsel asserts that Mrs. ██████ cannot go live in the Philippines with her husband and child because they would be forced to surrender the proper medical care, employment and safety necessary for survival as well as a life free from the fractional violence that exists in the Philippines. Counsel has submitted no evidence to show that the ██████ would be unable to find work in the Philippines. Mrs. ██████ is originally from the Philippines. Both Mr. and Mrs. ██████ are relatively young and healthy. Even if counsel had submitted documents to show that the family’s standard of living would be diminished if they relocated to the Philippines, this would be insufficient to show extreme hardship to Mrs. ██████.

As for the safety concerns counsel refers to, the one document counsel submitted on country conditions does not describe “fractional violence that currently threatens the population of the Philippines.” The State Department “Public Announcement” counsel submitted refers specifically to one particular section of the Philippines, Mindanao, not to widespread civil strife such that the ██████ would be unsafe throughout the country. The announcement warns American travelers to avoid hiking in areas of the Philippines where Muslim extremist groups have a stronghold and that these groups have kidnapped several prominent local business leaders and politicians for financial gain. Counsel has not asserted nor has he submitted documentation to show that the ██████ would be specifically vulnerable to attacks by Muslim extremist groups in the Philippines.

Counsel asserts that separation from Mr. ██████ would result in extreme financial hardship to Mrs. ██████ as she would be unable to pay for their mortgage and monthly expenses. The record, however, indicates that Mrs. ██████ is the primary breadwinner in the family. In 2003, the couple’s combined income was about \$58,000 and Mrs. ██████ earned about \$50,000 of that. In 2002, she earned all of the family’s \$42,000 income. Therefore, counsel failed to demonstrate how Mr. ██████ relocation to the Philippines would result in extreme financial hardship on Mrs. ██████.

Counsel asserts that separation from Mr. ██████ would result in extreme emotional hardship to Mrs. ██████. The AAO recognizes the difficulty the ██████ would experience at being separated from one another. Although it is clear that his wife would suffer emotionally, if he returned to the Philippines and she remained

here, or if she lost regular contact with her extended family here in the United States, the [REDACTED] face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on Mrs. [REDACTED] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

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 faces extreme hardship if the applicant is refused admission. 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 hardship experienced by the families of most individuals who are deported.

In this case, based on the documentation in the record, the situation of the applicant's qualifying relative does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) 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 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 rests 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