

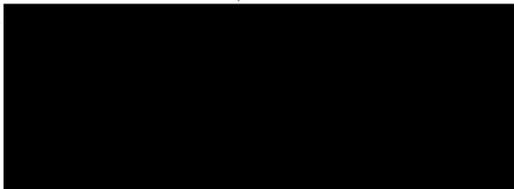
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FILE:



Office: LOS ANGELES DISTRICT OFFICE

Date: NOV 21 2009

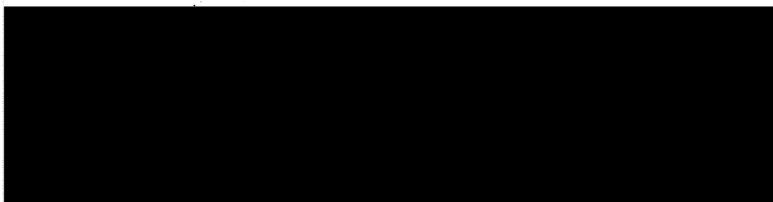
IN RE:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her U.S. citizen husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 14, 2005.

On appeal, counsel for the applicant contends that the decision of the district director erroneously stated that the applicant "failed to establish extreme hardship because of poor economic conditions in the Philippines" as the applicant did not claim hardship due to economic conditions, and that the decision did not comport with the law. *Statement from Counsel on Form I-290B*, filed 4 April 2005. Counsel also submits an Appeal Brief.

In addition to the Appeal Brief, counsel submits the birth and death records of the couple's child, both dated August 16, 2004, and various financial records showing joint accounts and joint ownership of a vehicle. The record also contains documents submitted in support of the Application for Waiver of Ground of Inadmissibility (Form I-601), dated August 16, 2002, including (1) two affidavits from the applicant's husband stating that he loves his wife deeply and that he is emotionally dependant on her, his family also depends on her and separation will break his heart; he adds that he does not want his wife to go to the Philippines where she will be deprived of the unlimited opportunities the United States offers; (2) a letter from the U.S. Postal Service, dated May 9, 2002, certifying that the applicant's husband was employed as a letter carrier, earning \$16.00 per hour, 40 hours per week; and another letter indicating he had worked for the Postal Service since November 5, 2001; (3) the naturalization certificate of the applicant's husband; (4) the couple's marriage certificate, and (3) joint income tax forms for 2001, indicating an income of approximately \$12,600. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act 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.

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 August 22, 1999 the applicant entered the United States using a false visa. Thus, the applicant procured admission to the United States by fraud or willfully misrepresenting a material fact. Accordingly, the applicant 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). The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 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 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 suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The record indicates that the applicant was born in the Philippines in 1977 and entered the United States in 1999; her husband was born in the Philippines in 1972 and became a U.S. citizen in 2000. They were married in 2001. Biographic Information (Form G235A) dated November 30, 2001, notes that both of the applicant's parents reside in the Philippines and her husband's mother resides in California and his father resides in the Philippines. The applicant's husband served in the U.S. Army from 1997 to 2001 and then in the California National Guard; in 2001 and 2002, he was working for the U.S. Postal Service. The applicant's husband has stated that he loves his wife and would suffer if separated from her. On appeal, counsel for the applicant notes, and the record reflects, that the applicant and her husband recently had a child who died during childbirth. Although this is a tragedy that clearly causes trauma to the parents, counsel fails to include documentation in the record related to this event that would be relevant to a hardship determination. Instead, counsel asserts that, "[t]he record contains affidavits and ties to the family [sic]. A review of the documentation, when considered in its totality, would ultimately show the trauma that [the applicant] would experience if she were to be denied [] a waiver of inadmissibility, the emotional hardship that the family would experience sufficiently establishes the existence of hardships that reach the level of extreme." *Brief in Support of Appeal*, dated March 30, 2005. Counsel's statement refers to trauma to the applicant, not to her husband, the qualifying relative, and there is no relevant documentation in the record to support counsel's assertions. The applicant's husband noted in his affidavit that the thought of being separated permanently from his wife makes him tremble with fear, anxiety and uncertainty and that his family depends on his wife. However, there is no documentation in the file to support his assertions or to indicate the extent of family ties that the applicant or her husband have in either the United States or the Philippines. There is no evidence of how long the applicant's husband has been residing in the United States or what community or family ties he has developed. Regarding the financial impact of the applicant's inadmissibility, the record indicates that the applicant's husband is the family's main support as an employee of the Postal Service; the applicant lists her employment as "caregiver," but there is no evidence of her income. There is no evidence in the record regarding her ability to use her skills and experience in the Philippines or the availability of employment in the Philippines for either her or her husband. The record is silent as to economic, social or political conditions in the Philippines.

Upon review, the applicant has not established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The statements of the applicant's husband, without more, also do not satisfy the applicant's burden of proof. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, there is no evidence regarding any hardship that the applicant's husband would suffer if he chose to accompany the applicant to the Philippines to avoid the painful separation he describes.

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant should he choose to remain in the United States. However, his situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 individuals being deported.

Again, it is noted that the applicant's husband may relocate to the Philippines with the applicant to avoid the hardship of separation, though he is not required to do so. He was born in the Philippines, and there is no evidence in the record that he would be forced to adjust to an unfamiliar culture or language if he returned there; nor is there evidence that he has close familial ties in the United States that he would be forced to leave. The AAO recognizes that he would lose his employment in the United States and suffer the resultant economic consequences if he returned to the Philippines. However, there is no documentation regarding conditions in the Philippines that support a conclusion that he and his wife would be unable to meet their financial needs in that country. Moreover, 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.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship. 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(a)(6)(C) 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.