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FILE:

Office: SAN FRANCISCO, CA

Date:

OCT 20 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, CA, and 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 (U.S.) 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 having procured admission into the United States by fraud or willful misrepresentation on June 21, 1999. The applicant is the daughter of two lawful permanent residents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the hardships described by the applicant's parents were normal hardships that would be expected upon separation from a family member and do not rise to the level of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated June 7, 2004.

On appeal, counsel states that the Director abused his discretion for failing to adequately consider all factors of extreme hardship. *Counsel's Appeals Brief*, dated August 4, 2004.

The AAO notes that counsel's Form I-290B refers to the applicant's U.S. citizen spouse, however the record does not indicate that the applicant is married to a U.S. citizen. In addition, counsel's appeals brief and the first page of the decision from the district office states the incorrect "A" number for the applicant. The correct "A" number for the applicant is [REDACTED]

The record indicates that on April 29, 2003 the applicant testified under oath that she entered the United States on or about June 21, 1999 by presenting a fraudulent passport and visitor's visa in the name of Mary [REDACTED]

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien herself experiences or her children experience due to separation is irrelevant to

section 212(i) waiver proceedings unless it causes hardship to the applicant's parents. 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).

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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The AAO notes that extreme hardship to the applicant's parents must be established in the event that they resides in the Philippines or in the event that they reside in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her parents in the event that they reside in the Philippines. In his brief, counsel asserts that the applicant's parents will suffer emotionally, financially and physically as a result of relocating to the Philippines. The applicant's father states in his declaration that most of his family resides in the United States, except for his two sons who he has petitioned for. The AAO notes that in counsel's brief he states that the applicant's two brothers have since come to the United States, leaving no remaining family members in the Philippines. The applicant's father states that it would be extreme emotional hardship to be separated from his family in the United States. The

applicant's father also states that relocating to the Philippines would cause extreme physical hardship because of his advanced age. The applicant's father is over 60 years old and suffers from diabetes. He submitted a medical record showing his treatment for diabetes. Counsel asserts that the applicant's father will lose his job and medical insurance if he relocates to the Philippines. Counsel submitted a Consular Information Sheet for the Philippines, which states that medical insurance is not always valid outside of the United States and that hospitals in the Philippines often require immediate cash payment upon treatment. Counsel asserts that the applicant's father also fears for his safety if he relocates to the Philippines because of political unrest and terrorist activity. Again, to support these assertions, counsel submitted the Consular Information Sheet for the Philippines, which states that terrorist groups have issued public threats against U.S. citizens in the Philippines and that Americans are urged to exercise caution when traveling through the country. The AAO finds that taking into account the totality of the family separation, lack of medical care and the father's age, the record does reflect that relocation will result in extreme hardship to the applicant's father.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her parents remain in the United States. Counsel states that the applicant's parents will suffer emotional and financial hardship if the applicant is removed from the United States. The applicant's father submitted a psychological report from [REDACTED] regarding the emotional stress he was experiencing due to the applicant's immigration status. The psychological evaluation was completed on June 14, 2003. [REDACTED] concluded that the applicant's father is predicted to experience major depression if the applicant is forced to leave the United States. The applicant's father told [REDACTED] that he was experiencing symptoms of insomnia and feelings of hopelessness. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's father and the psychologist. The record fails to reflect an ongoing relationship with the applicant's father or any history of treatment for the symptoms suffered by the applicant's father. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the reports value in determining extreme hardship.

Counsel also states that if the applicant is removed the applicant's two U.S. citizen children will continue to reside in the United States with the applicant's parents. He states that the children living in the United States without the financial support of their mother would mean that the applicant's parents would suffer financially. The applicant's mother is currently unemployed and can speak very little English. Counsel states that the applicant's mother requires the applicant's help to complete her daily activities. There is no evidence in the record to support counsel's assertions regarding the applicant being needed to help her parents with daily activities. There is no documentation to show that if the applicant was removed the applicant's siblings living in the United States would not be able to care for and help their parents financially. Counsel also failed to establish that the applicant's parents would not be able to visit the applicant in the Philippines, thereby avoiding complete family separation.

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.

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.

ORDER: The appeal is dismissed.