



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO DISTRICT OFFICE

Date: OCT 25 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco. The matter 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. Mr. Abesames 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 with his wife, a lawful permanent resident (LPR).

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, his LPR wife, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 8, 2004.

On appeal, counsel for the applicant states that U.S. Citizenship and Immigration Services (CIS) abused its discretion in denying the I-601 waiver and failing to apply relevant law to the facts of hardship to [REDACTED] wife. *Notice of Appeal to the Administrative Appeal Office (AAO) (Form I-290B)*, May 3, 2004; *Brief in Support of I-290B*, July 10, 2004. In addition to the Brief, the record contains a statement from the applicant's wife in which she describes the emotional distress she is suffering because of her husband's immigration case and stating that she is depressed and cannot sleep or eat and that she will suffer a nervous breakdown without her husband. She also explains that she cannot live in the Philippines because of the weather, food, hygiene and water, and that her health deteriorated when she was last in the Philippines and her doctor advised her to move to a cleaner environment; that she will suffer financially in the Philippines because neither she nor her husband will be able to find meaningful jobs because employers prefer younger workers, and in the United States where her sole income will not be enough to save for the future or possibly to pay their bills; and that their children and grandchildren will suffer tremendous emotional distress if her husband is deported. *Statement by [REDACTED]* undated, submitted with I-601, February 11, 2002. There is no other evidence in the record relevant to a hardship determination, despite a statement by [REDACTED] counsel that the applicant plans to submit "documents from physicians in the United States, social workers and [an] economist from the Philippines and support letters from U.S. Congress representatives" before July 23, 2004. *Request for Additional Time to Submit Applicant's Brief in Support of I-290B*, June 4, 2004.

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.

8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(i) of the Act provides:

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

Regarding the District Director's finding that the applicant is inadmissible, the record reflects that [REDACTED] admitted obtaining a passport and visa in Manila which were not issued in his name and using them to enter the United States in 1991. The applicant, therefore, fraudulently procured admission to the United States. The District Director accordingly correctly determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel does not contest this finding.

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 or to his children is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. In this case, LPR 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 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 San Francisco 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In this case, the record reflects that [REDACTED] was born in 1950, and [REDACTED] in 1951, both in the Philippines. They were married there in 1977 and have four adult children, all of whom were born in the Philippines between the years of 1970 and 1984. There is no evidence in the record as to their current immigration status other than the naturalization certificate of their eldest son, [REDACTED] who became a U.S. citizen in 2000. He filed an I-130 petition for his father, [REDACTED], in 2002. Based on information in [REDACTED] affidavit of support at that time, he had also signed an affidavit of support for his mother, [REDACTED], in 2000; [REDACTED] tax records showed a joint income for him and his wife of approximately \$71,000 in 2001. There is no evidence in the record regarding the financial situation or income of [REDACTED] although counsel notes in his Brief that [REDACTED] is a nurse by profession and has a degree in nursing and that they have good jobs in the United States. Biographic information in the record (Form G-325, dated August 15, 2001) states that [REDACTED] works at Outback Steakhouse in “food prep.” In his Brief, counsel reiterates [REDACTED] fears that neither she nor her husband will be able to find other than menial jobs in the Philippines, and notes that [REDACTED] “will suffer emotional devastation from being separated from her entire family in the United States including her parents and siblings” if forced to move to the Philippines. Again, there is no evidence in the record regarding the existence, whereabouts or immigration status of her parents or siblings.

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 [REDACTED]*, 17 I&N Dec. 503, 506 (BIA 1980). [REDACTED] statement indicates her long term commitment to her husband and how much she will miss him if she chooses to remain in the United States without him; however, assertions that she will “definitely suffer a nervous breakdown” or that living in the Philippines will be harmful to her health or that her doctor advised her against living in the Philippines cannot be given much weight absent supporting evidence. In this case, the record is completely silent on country conditions in the Philippines and the personal financial and health situation of [REDACTED]. 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)).

The record as it exists does not support a finding that [REDACTED] would suffer extreme hardship if [REDACTED] were not granted a waiver of inadmissibility, although the AAO recognizes that the emotional and psychological hardship of separation from her husband after a marriage of almost 30 years would be difficult for [REDACTED] if she chose to remain in the United States separated from her husband. Separation from a spouse is a significant factor to be considered for purposes of an extreme hardship determination and it is not discounted. In this case, however, [REDACTED] has indicated that she has close ties to a large extended family in the United States, including her children and grandchildren, and there is no indication that she would not be able to support herself. At least one of her children, all of whom are adults, has indicated his ability to provide financial assistance if necessary in his legally enforceable Affidavit of Support. If [REDACTED] decided to accompany her husband to the Philippines to avoid the hardship of separation, there is no evidence that she or her husband would not be able to adjust to life in the Philippines or not be able to earn a living wage. In fact, although the record does not specify exactly when [REDACTED] left the Philippines, the record indicates that she and her husband grew up there and spent some of their adult years in the Philippines, as they were married there and their children were born there; they state that their youngest child was born there in 1984, when [REDACTED] was 33; and [REDACTED] did not arrive in the United States until 1991, when he was 41. Having lived there as adults, adjusting to life in the Philippines would not represent an extreme hardship for them. There is no indication that [REDACTED]' health or financial situation would suffer, other than unsupported statements in the record. Absent information on country conditions and the affect of such conditions on the personal economic or health situation of [REDACTED] the AAO cannot conclude that any hardship experienced as a result of relocation to the Philippines would be extreme. Although [REDACTED] would be separated from her family members in the United States if she relocated to the Philippines, the record does not support a conclusion that the hardship of this separation would be beyond that which is normally experienced in most cases of removal or inadmissibility.

The record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if her husband is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. 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, [REDACTED], 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. 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 who are deported. [REDACTED] *INS*, 927 F.2d 465, 468 (9th Cir. 1991). The AAO recognizes that [REDACTED] will endure hardship as a result of separation from her husband, especially in light of their long-term relationship; however, she has the option of avoiding the hardship of this separation by joining her husband in the Philippines. Her situation, based on the record, is typical of individuals separated as a result of removal or inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his LPR spouse as required

under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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.