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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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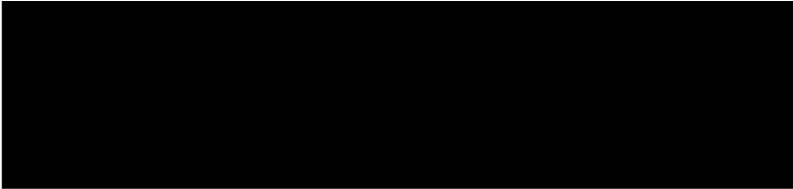
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FILE:  Office: SAN FRANCISCO, CA Date: **SEP 15 2006**

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California 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 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 attempted to procure entry into the United States by fraud or willful misrepresentation. 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 spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated April 15, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of fact and law in finding that the applicant was inadmissible and that she failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated June 1, 2004.*

In support of these assertions, counsel submits a declaration dated May 27, 2004 and a brief dated December 18, 2003. The record also includes, but is not limited to, the false Form I-94 card used by the applicant; a declaration by the applicant, dated December 17, 2003; a declaration by the applicant's spouse, dated December 17, 2003; copies of the death certificates of the applicant's spouse's family members; Grant deed of property to the applicant and her spouse, dated October 1, 2002; a copy of the applicant's Philippine birth certificate; a copy of the applicant's Philippine passport; tax statements for the applicant's spouse; an employment letter for the applicant's spouse, dated April 26, 2001; a copy of the applicant's spouse's U.S. passport; a copy of the marriage certificate, dated April 5, 2001; a copy of the Japanese family registry, noting that the applicant divorced her first husband on September 20, 1993; and bank statements for the applicant and her spouse. The entire record was reviewed and considered in rendering this 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.

The record reflects that the applicant admitted to using a tourist visa under an alias to gain admission to the United States. *Form I-485; False Form I-94 card used by the applicant.* The AAO acknowledges counsel's assertion that the applicant's use of an alias name is not a *material* misrepresentation (emphasis added), as the applicant did not play any direct part in obtaining the visa, and therefore did not make any misrepresentations to any immigration official. *Form I-290B, dated June 1, 2004.* The AAO finds that counsel's analysis is incorrect.

The determination of materiality is a fact which would make the alien excludable or shut off a line of inquiry which may have resulted in exclusion. *Matter of S-& B-C-*, 9 I&N Dec. 436 (BIA 1960). The applicant misrepresented her identity to immigration officials in order to procure the benefit of admission to the United States. In such an instance, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to her, and whether any United States government agency possesses information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented her identity, she cut off these material inquiries. Specifically, the inspecting officer was unable to determine whether the applicant was the true owner of the passport and visa, whether she possessed valid admission documents of her own, or whether the United States possessed information that has a bearing on the applicant's eligibility for admission. Had the applicant revealed her true identity to the inspecting officer, she would have been refused admission due to her lack of valid admission documents. Thus, the applicant misrepresented her identity to gain a benefit under the Act for which she was not eligible, and such misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse, if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or the United States, as he is 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.

If the applicant's spouse travels with the applicant to the Philippines, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse currently has no living immediate family members. *Declaration by the applicant's spouse, dated December 17, 2003.* The applicant's spouse was born in the United States. *Form G-325A.* The record makes no mention of what family ties, if any, he has in the Philippines. The applicant's spouse is a full-time employee with United Airlines, holding the position of Ramp Serviceman. *Letter of employment for the applicant's spouse, dated April 26, 2001.* There are no published country condition reports included in the record to demonstrate that the applicant's spouse would have difficulty obtaining employment in the Philippines. Counsel states that the applicant's spouse has a family history of cancer, and that in June 2004, the applicant's spouse was scheduled for a medical appointment to test for cancer. *Attorney's declaration, p. 9.* The AAO observes that there is no medical documentation included in the record regarding the applicant's spouse's health. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As mentioned previously, the applicant's spouse currently has no living immediate family members. *Declaration by the applicant's spouse, dated December 17, 2003.* The applicant's spouse stated that if he were to remain in the United States while the applicant departed, it would be devastating to him on an emotional level. *Id.* 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. On an economic level, the applicant's spouse would not be able to maintain their family home without the applicant. *Id.* He depends upon his spouse's earnings combined with his own to cover the household bills, including the mortgage on the home they own together. *Attorney's brief, p.4; Grant deed of property to the applicant and her spouse, dated October 1, 2002.* While the AAO acknowledges that the applicant's spouse may be financially impacted by the applicant's departure, there is nothing in the record that shows the applicant would be unable to contribute to her spouse's and her own financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

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.