



U.S. Citizenship
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FILE:

Office: LOS ANGELES, CA

Date: SEP 19 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 in December 1996. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that there was no evidence in the record to support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal. The application was denied accordingly. *Decision of the District Director*, dated January 27, 2005.

On appeal, counsel asserts that the director failed to consider all the factors in the applicant's case and did not meaningfully address all the relevant factors. *Counsel's Brief*, dated February 22, 2005.

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 indicates that in December 1996 the applicant presented a Filipino passport with a name and birth date that were not her own to gain entry into the United States. 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 child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or in the event that he resides in 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in the Philippines. In his brief, counsel states that the applicant's spouse has resided in the United States for 30 years. Counsel states that the applicant's spouse came to the United States at a young age and his entire family resides in the United States. Counsel also states that the applicant's spouse speaks Tagalog with difficulty and will have no employment opportunities in the Philippines. In support of his assertions the applicant's spouse submits the 2002 State Department Report for the Philippines which states that there have been terrorists threats to American citizens and that the minimum wage in the Philippines does not provide a decent standard of living for a worker and family. The AAO notes that the applicant's spouse did not submit information for the Philippines specific to his line of work. The record indicates that the applicant's spouse is employed by a cable company. There was no evidence to show that it would be difficult for the applicant's spouse to find employment in his field in the Philippines. Though he states that he is no longer fluent in Tagalog, the applicant's spouse was born and raised in the Philippines and would presumably be able to readjust to the language and culture. The applicant has not shown extreme hardship if her spouse were to accompany her to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that the loss of his wife and step-son would cause him extreme hardship and that he would not be able to visit the Philippines on a regular basis because of traveling costs. He states that he and the applicant rely on each other's joint income to pay their expenses and he would suffer financially if the applicant were removed from the United States. The applicant did not submit any financial records to support these assertions.

In support of the emotional hardship the applicant's spouse is suffering, the applicant submitted an evaluation from a psychiatrist and a social worker. The social worker's evaluation, from [REDACTED], dated May 19, 2003, states that she performed a psychosocial evaluation and mental status examination on the applicant's spouse. She states that the applicant's spouse is suffering from severe depression, severe anxiety and has a strong likelihood of suffering post-traumatic stress. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report from the social worker is based on a single interview between the applicant's spouse and the social worker. The record fails to reflect an ongoing relationship with the applicant's spouse, any recommendations for treatment or any history of treatment for the disorders suffered by the applicant's spouse. 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 mental health professional, thereby rendering Lisa Wulken's findings speculative and diminishing the reports value in determining extreme hardship.

The psychiatric evaluation from Dr. [REDACTED] dated February 22, 2005, stated that the applicant is experiencing clinical major depression and that he is on anti-depressant medication, sleep medication and an exercise program for his symptoms. Again, the submitted report is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the disorder suffered by the applicant's spouse. The report does state that the applicant's spouse is on medication and an exercise program, but the record does not

include any follow-up reports concerning the effects of the treatment or a prescription for the medication. As with the report from the social worker, the conclusions reached in the psychiatrist's report, were based on a single interview and do not reflect the insight and elaboration commensurate with an established relationship with a psychiatrist. In addition, the AAO notes that the two reports were conducted over one year apart and there is no evidence to suggest that the applicant's spouse was being treated for his symptoms during the period in between the two reports.

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 deportation or exclusion and does not rise to the level of extreme hardship.

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.