

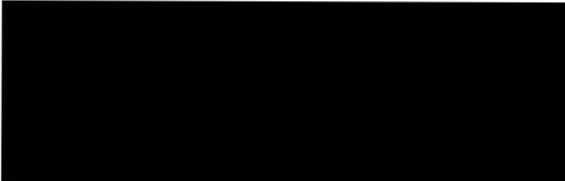


U.S. Citizenship
and Immigration
Services

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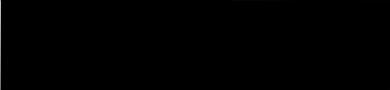


FILE:

Office: PHOENIX, AZ

Date: **SEP 22 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, Phoenix, AZ, 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 August 3, 1997. The applicant is married to a U.S. citizen. 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 applicant did not establish that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated September 3, 2004.

On appeal, counsel states that the director abused his discretion in denying the applicant's waiver application, the applicant has established that her spouse would suffer extreme hardship and that the applicant warrants the favorable discretion of the Service. *Counsel's Appeals Brief*, dated October 20, 2004.

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 on January 5, 2004, the applicant stated under oath that she entered the United States on August 3, 1997 by using a Filipino passport and visitor's visa that was not her own.

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 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 reviewing 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 statement, the applicant states the he is 72 years old and suffers from: an enlarged prostate, high cholesterol, liver enzymes, low blood platelets, memory loss and poor sleep patterns. The applicant submitted various medical reports to support these claims. The applicant's spouse was born in the United States and has lived his entire life in the United States. The applicant's spouse also states that he is a retired post office employee and works part-time as a security guard. In addition, the applicant's spouse submitted evidence to show he has substantial financial ties to the United States including the deed to his home and the registration form and articles of organization for his business, Best Choice Caregivers. Counsel states in his brief that the applicant's spouse will not be able to find employment in the Philippines, cannot speak Tagalog, and would not be able to receive the same health care in the Philippines as he does in the United States. The AAO finds that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines. The applicant's spouse is elderly with many health issues that require adequate health care. He has lived in the United States all of his life and at his advanced age it would be extremely difficult for him to overcome the language and cultural barriers associated with relocating to a foreign country. Furthermore, the applicant's spouse has substantial financial ties to the United States, including a home and a business. Therefore, combining the physical, financial and personal hardships the applicant's spouse will face in the Philippines, the AAO finds that he will suffer extreme hardship as a result of relocating 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 applicant is the only family that he has. He states that most of his brothers and sisters are dead. He states that he does have two children from a previous marriage who he hardly ever sees and they live in different states. He states that he does not know how much longer he can work because of his health and he depends on the applicant to care for him. He also states that the applicant works as the manager of their business and if she is removed he will be forced to claim bankruptcy.

The AAO notes that the applicant submitted no documentation to show the status of his business and how the applicant's removal would cause that business to fail. In addition, the record does not show that the applicant's spouse requires the applicant's help with his everyday care and to maintain his wellbeing. The applicant's spouse submitted various medical reports substantiating his claims that he does suffer from a low platelet count, low levels of white blood cells, problems with urination, high cholesterol and sleep problems. However, these reports do not establish that the applicant's spouse requires the everyday care of the applicant. The medical reports provide no insight into the everyday symptoms suffered by the applicant's spouse because of these medical ailments. Therefore, based on the current record, the AAO cannot conclude that the applicant will suffer extreme hardship as a result of the applicant's removal from the United States.

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.