

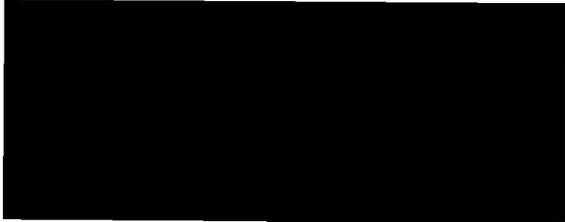
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



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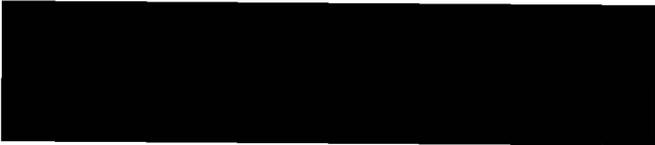
Date: SEP 28 2006

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, Washington, D.C., 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission (adjustment of status) into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. 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 family.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 23, 2005.

On appeal, counsel asserts that the evidence presented with the application clearly demonstrated extreme hardship to the applicant's spouse. *Form I-290B*, dated October 21, 2005.

The record includes, but is not limited to, counsel's memo, a statement from the applicant's spouse, a psychological evaluation of the applicant's spouse, letters of support and information on country conditions in the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 20, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an allegedly approved Petition for Alien Worker (Form I-140). The applicant submitted a fraudulent Notice of Action (Form I-797) to show that a Form I-140 had been approved on her behalf and as a result, the Form I-485 was denied on February 13, 2002. As a result of this misrepresentation, the applicant is inadmissible to the United States.¹

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 On October 22, 1996, a Warrant of Removal/Deportation (Form I-205) was issued and a Notice to Deportable Alien (Form I-166) was forwarded to the applicant requesting that she appear at the Los Angeles, California district office in order to be removed from the United States. The applicant failed to appear as requested. The record reflects that on April 20, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) which was denied on February 13, 2002. Between August 21, 2002 and January 3, 2003, the applicant departed the United States. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 20, 1998, the date of filing Form I-485. The applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year and departing the United States thereafter.

- (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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien or her child experiences is relevant only to the extent 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 lawful permanent resident or United States citizen spouse or parent in 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to the Philippines or in the event that he remains 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 first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to the Philippines. Counsel states that the applicant and her spouse have no possibility of employment in the Philippines and the country conditions are extremely unstable due to the high incidence of criminal activities and unemployment. *Memo in Support of Appeal*, at 2, dated October 20, 2005. There is no evidence that the applicant and/or her spouse cannot obtain employment in the Philippines. The record includes an announcement reminding travelers to the Philippines of security concerns, particularly in Mindanao. *U.S. Department of State Public Announcement on the Philippines*, at 1, dated July 16, 2003. The AAO notes that there is no indication that the applicant's spouse would relocate to this area.

The applicant's spouse states that he has been in the United States for the past eighteen years and his means of livelihood has been in the United States. *Statement of Applicant's Spouse*, at 1, dated December 16, 2003. The record reflects that the applicant's spouse is originally from the Philippines and is familiar with the language and culture, thereby mitigating the effects of relocation. The record includes a letter which states that the applicant's spouse has psoriasis, a skin condition. *Letter from [REDACTED]* dated September 8, 2005. However, there is no indication that he cannot receive suitable medical care in the Philippines for this condition. Medical care is generally adequate in the Philippines. *U.S. Department of State Consular Information Sheet on the Philippines*, at 4, dated October 11, 2002.

After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates 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 record includes a letter which states that the applicant assists her spouse with injections relating to his skin condition. *Letter from [REDACTED]* The record includes a psychological evaluation which states that the applicant's spouse is avoiding some level of depression and possible suicidal ideation related to the current situation or that he fears such reactions were he to separate from the applicant. *Psychological Evaluation*, at 4, dated July 21, 2003. The AAO acknowledges the important role of a clinical psychologist, however, it gives little weight to the submitted report as it is based on a one-time meeting and there is no mention of a follow-up appointment, proposed therapy or treatment for the applicant's spouse. The applicant's spouse states that the applicant helps him deal with emotional issues related to his skin condition. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. As such, the record does not reflect extreme hardship in the event that the applicant's spouse remains in 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. 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.

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.