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

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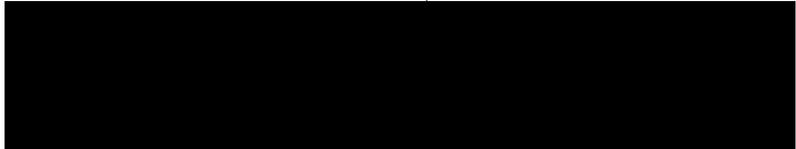


FILE: [Redacted] Office: MANILA, THE PHILIPPINES Date: APR 17 2007

IN RE: [Redacted]

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 PETITIONER:



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, Manila, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant is a native and citizen of the Philippines who, on or around March 8, 2004, applied for a K-3 nonimmigrant visa as the spouse of a United States citizen who had filed a relative petition on his behalf, for the purpose of awaiting the approval of the relative petition and availability of an immigrant visa, pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii). The relative petition filed on behalf of the applicant was approved on November 10, 2004. In adjudicating the K-3 nonimmigrant visa, the district director determined that the applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his United States citizen wife will suffer extreme hardship if he is required to remain in the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's grounds of inadmissibility, the record reflects that he applied for a B-1/B-2 visa in August 1998. The letter of employment he submitted in connection with his application was fraudulent; he did not actually work for the company from which the letter came.

Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (his employment) in order to procure entry into the United States. Accordingly, the applicant 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).

The applicant does not contest the district director's finding of inadmissibility. Rather, he is filing for a waiver of said inadmissibility.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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:

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 violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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 Bureau of Immigration Appeals (BIA) 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 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. 22 I&N Dec. at 565-566.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General*—

(1) *Filing procedure*—

- (i) *Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

The applicant filed the instant Form I-601 on June 23, 2005 at the United States Consulate in Manila. The Department of State promptly forwarded the application to CIS, which denied the application on July 21, 2005. On appeal, counsel contends that the applicant qualifies for a waiver of inadmissibility. Counsel contends that refusing entry to the applicant inflicts extreme hardship on his wife.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere

showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's wife is a forty-three-year-old citizen of the United States. She has been a United States citizen since 2003. She and the applicant have been married since September 12, 2002.¹ The record contains two statements from the applicant's wife. In her first statement, submitted with the I-601 application, she states her great love for the applicant; that she is having sleepless nights without him; that she and her husband have been suffering, emotionally and physically; that the couple needs to be together in order to start a family; that there is no future for the couple in the Philippines; that she cannot afford to visit him in the Philippines often due to costs; and discusses the care that she provides to her mother.

In her second statement, submitted on appeal, the applicant's wife discusses the security situation in the Philippines; states that she sends money to her husband in the Philippines despite her own financial obligations; and again describes her great love for the applicant.

The record also contains evidence of the applicant's wife's elderly mother's medical condition. She suffers from heart disease, hypertension, hypothyroidism, cataracts, and arthritis, and takes twelve medications to manage her conditions. The applicant's wife takes her to all of her doctor's appointments. She lives with her mother, a United States citizen, and pays her expenses.

The record also contains evidence of the applicant's wife's medical condition. According to a psychological evaluation contained in the record, she suffers from generalized anxiety disorder, for which she takes medication.

The record also contains testimony from the applicant's wife's mother and brother. Each describes the great love the couple shares and requests that CIS grant the requested waiver. Her brother explains that he has

¹ The applicant and his wife were engaged in 1995 and married on June 22, 1998. However, when applying for a V visa in 2002, they learned that the marriage certificate from 1998 failed to indicate that they had obtained a marriage license prior to the marriage. As such, the marriage was not considered legally valid. They obtained the requisite license and concluded a legally valid marriage on September 12, 2002.

recently accepted a job that requires him to be away from home three weeks per month, so he cannot assist the applicant's wife in caring for their mother.²

The record also contains testimony from the applicant. He explains that being away from his wife is like dying slowly; discusses his great love for his wife; and expresses his deep regret over the incident of visa fraud in 1998 (he states that it was temporary insanity; he did it all for the reason of wanting to be with his wife sooner and did not consider the consequences of his actions).

The record also contains testimony from the applicant's sister and another unspecified relative. Both women express their hope that the applicant be permitted to enter the United States and join his wife.

Finally, the record contains documentary evidence regarding the medical conditions of the applicant's wife and mother.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The AAO finds that the district director erred in finding that the applicant's United States citizen wife would not face extreme hardship if she joins her husband to live in the Philippines. Although she was born in the Philippines, the record demonstrates that returning at this point would be quite difficult. Leaving her mother in the United States would likely result in her entering a residential treatment facility, and taking her along to the Philippines would result in a decreased quality of care. Treatment of her own medical conditions would likely suffer, also. She would also leave behind an extended family network in California.

However, the record does not support a finding that, if she remains in the United States without the applicant, she would face extreme hardship if she were remain in California without her husband. While the psychological evaluation indicated that she suffers from anxiety, it does not indicate that separation from her husband is causing her to experience emotional difficulties beyond others in her situation. Moreover, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's wife and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any history of treatment for the generalized anxiety disorder suffered by the applicant's wife. Also, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme

² According to counsel, the other brother cannot assist in the care of his mother due to military obligations; while he recently returned from a deployment to Iraq he is not currently stationed in the area.

hardship. The applicant's wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

Although the AAO finds that the applicant's wife would face extreme hardship if she were to join him in the Philippines, the applicant is required to also demonstrate that his wife would also face extreme hardship if she were to remain in the United States without him. As noted in the previous discussion, such a demonstration has not been made. As the applicant has submitted no evidence to establish that such extreme hardship would exist if his wife remained in the United States without him, the AAO is unable to make such a finding at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.