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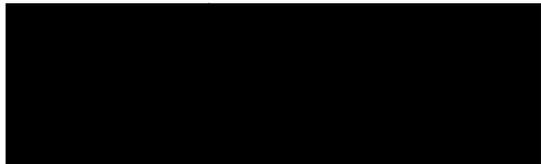
U.S. Department of Homeland Security
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FILE:



Office: MANILA, PHILIPPINES

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APR 23 2007

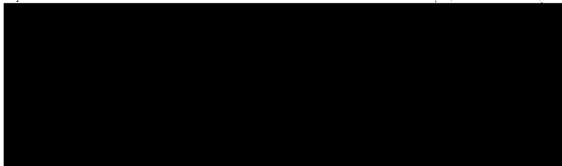
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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 Acting Officer in Charge, Manila, the Philippines. The matter 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. She applied for an immigrant visa in order to enter the United States as a lawful permanent resident (LPR); however, she was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission to the United States using a tourist visa when she was actually an intending immigrant. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The acting officer in charge denied the waiver application after concluding that the applicant had failed to establish extreme hardship to her spouse. On appeal, counsel asserts that the applicant did not misrepresent her intent when she tried to enter the United States using her tourist visa in March 2004. Counsel asserts that the applicant did not intend to stay permanently in this country, but planned to return to the Philippines. Counsel also contends that the applicant's husband will suffer extreme hardship should the applicant be removed. The entire record was reviewed in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The acting officer in charge based the finding of inadmissibility under this section on the applicant's March 2004 attempt to procure admission into the United States using a tourist visa. The record reflects that the applicant married her U.S. citizen husband in December 2003, closed her business in the Philippines, and brought her youngest son with her to the United States; hence, it must be concluded that she was not a tourist but was an intending immigrant. The record does not include any evidence in support of the applicant's claim that she was planning to return to the Philippines. The AAO concurs with the acting officer in charge's finding regarding inadmissibility under this ground.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). Hardship to the alien herself or to her children is not a permissible consideration under the statute, except as it may affect the qualifying relative. A § 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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 Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

In the present matter, the qualifying relative is the applicant's spouse. As he is not required to reside outside the United States based on the denial of the applicant's waiver request, the applicant must establish that her spouse would experience extreme hardship whether he remains in the United States or relocates to the Philippines.

The record in the instant case contains sufficient evidence to demonstrate that the applicant's husband would suffer extreme hardship if he chose to relocate to the Philippines to accompany the applicant. The applicant's husband is the sole legal guardian of his adult son, who has Down Syndrome. According to the record, the applicant cannot leave his son nor would it be advisable to move his son to the Philippines, where his lifestyle options would be much more limited.

Counsel also contends that the applicant's husband would experience extreme emotional hardship if the applicant is not allowed to immigrate to the United States. The AAO notes, however, that the record contains no evidence that distinguishes the distress felt by the applicant's husband from that commonly experienced by spouses separated as a result of an inadmissibility determination. Although the applicant's husband at the time of filing indicated that his health is being affected by worry and that maintaining two households in two countries, visiting the applicant in the Philippines and paying for his stepsons' education in the Philippines is creating a "hard burden," there is no evidence on the record that establishes that his anxiety and financial concerns rise to the level of extreme hardship.

Although the applicant's husband's anxiety is not taken lightly, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, there exists affection and emotional and social interdependence, and a separation or involuntary relocation nearly

always results in hardship to individuals and families. Yet in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.