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

PUBLIC COPY

MR

[Redacted]

FILE:

Office: PHOENIX, ARIZONA

DEC 07 2007
Date:

IN RE:

Applicant:

[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 APPLICANT:

[Redacted]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It is noted that the applicant, through prior counsel, requested a 90-day extension to submit a brief and/or evidence, but nothing was submitted within 90-days. On September 28, 2007, in response to a facsimile from the AAO, counsel indicated that prior counsel requested 90-days to submit a brief or evidence; however, current counsel was "not informed as to whether [the AAO] had granted [previous counsel] this opportunity." The AAO notes that when a request is made on the I-290B to supplement an appeal with a brief and/or evidence within a certain amount of time, the AAO does not send written approval, as approval is automatic, and counsel is expected to submit their brief and/or evidence within the time requested. The facsimile was not intended to solicit a new brief, but only to insure that any information that had been submitted previously was available for review. The AAO notes that nothing was submitted within 90-days and nothing was submitted by current counsel on September 28, 2007; therefore, the record must be considered complete.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport and nonimmigrant visa in someone else's name. The record indicates that the applicant's spouse is a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 naturalized United States citizen spouse, three lawful permanent resident children, and naturalized United States citizen father.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Acting District Director's Decision*, dated January 13, 2006.

On appeal, the applicant, through counsel, contends that the Acting District Director "wrongly interpreted and ignored precedent cases and supporting documentation filed with applicant's brief in denying applicant's Form I-601." *Form I-290B*, filed January 27, 2006. Additionally, counsel states the "[a]pplicant also intends to submit additional documentation in this appeal for consideration as evidence to show extreme hardship to USC husband and applicant's USC father, if applicant departs for the Philippines as a result of denial of her Form I-601." *Id.*

The record includes, but is not limited to, prior counsel's brief, a letter from the applicant's doctor regarding her medical conditions, a letter from the applicant's father's doctor regarding his medical conditions, and five letters of recommendations from the applicant's friends. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) 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.

- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 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 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 AAO notes that the record contains several references to the hardship that the applicant's lawful permanent resident children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse and father are the only qualifying relatives, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse and father.

In the present application, the record indicates that on March 25, 1986, the applicant's daughter [REDACTED] was born in the Philippines. On October 26, 1989, the applicant's son, [REDACTED] was born in the Philippines. On June 9, 1992, the applicant's son, [REDACTED] was born in the Philippines. On March 12, 1997, the applicant entered the United States by presenting a fraudulent passport. On December 28, 2002, the applicant married [REDACTED] a naturalized United States citizen, in Arizona. On April 17, 2003, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 22, 2005, the applicant's Form I-130 was approved. On August 26, 2005, the applicant filed a Form I-601. On January 13, 2006, the Acting District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relatives.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse and father. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Prior counsel asserts that the applicant's United States citizen spouse and father would face extreme hardship if the applicant were removed to the Philippines. *Form I-290B, supra*. Prior counsel states that "[t]he risk of relocation by applicant's United States citizen husband, and children to the Philippines will cause extreme hardship to applicant's USC husband, and USC children because of the unsafe conditions in the Philippines." *Brief in Support of Form I-601*, page 2, dated August 26, 2005. The AAO notes that the applicant's husband is a native of the Philippines, who spent his formative years in the Philippines, and it has not been established that the applicant and her husband have no family ties in the Philippines. Additionally, as noted above, the applicant's children are not qualifying relatives for a waiver under section 212(i) of the Act. Medical documentation in the record appears to indicate that the applicant's father has a history of coronary artery disease and hypertension, and was diagnosed with chronic obstructive pulmonary disease, gallstones, hypertensive cardiovascular disease, prostatic enlargement with elevated PSA, lumbar disk L3-L4, L4-L5 with possible radioculopathy, spinal stenosis, osteoarthritis, anxiety reaction and carotid stenosis; however, there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. *See letter from [REDACTED]*, dated August 10, 2005. The AAO notes that there was no documentation submitted establishing that the applicant's father could not receive treatment for his medical conditions in the Philippines. Further, there is no indication that the applicant's father has to remain in the United States to receive his medical treatments. Prior counsel states the applicant "was diagnosed with hypothyroidism on June 7, 2005 and may need surgery." *Brief in Support of Form I-601, supra* at 4. Prior counsel states "[a]s a result of the above illnesses, applicant's physical capabilities are partially limited. She finds it extremely difficult working long hours, and doing a job that involves physical activities." *Id.* The AAO notes that the hardship the applicant herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. Prior counsel states that if the applicant's husband joins the applicant in the Philippines he will not be able to secure similar employment to what he has in the United States. *Id.* at 5. The AAO notes that the applicant has not established that her husband has no transferable skills that would aid him in obtaining a job in the Philippines. Additionally, the AAO notes that the applicant's spouse and father did not provide statements or affidavits regarding the extreme hardship they would suffer if the applicant were removed from the United States. The AAO finds that the applicant failed to establish extreme hardship to her spouse and father if they accompany her to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's United States citizen spouse and father if they remain in the United States, with the applicant's husband maintaining his employment and her

father continuing to receive sufficient medical care. Prior counsel states the “[a]pplicant provides support, and care to her sick father.” *Brief in Support of Form I-601, supra* at 5. The AAO notes that there was no evidence submitted establishing that the applicant provides any support to her father. Additionally, the AAO notes that the applicant resides in Arizona while her father resides in California. As United States citizens, the applicant’s husband and father are not required to reside outside of the United States as a result of denial of the applicant’s waiver request. Prior counsel states that the applicant’s “USC spouse and USC children will suffer psychological hardship.” *Id.* The AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant’s removal to the Philippines would affect the applicant’s husband mentally, emotionally, and/or psychologically. Further, the record fails to demonstrate that the applicant will be unable to contribute to her family’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 United States citizen husband and father will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States, is typical to individuals separated as a result of removal 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(a)(6)(C)(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.