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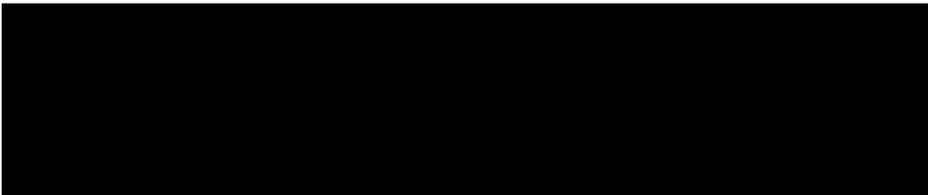
Date: FEB 02 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California 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 under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and is the daughter of a naturalized U.S. citizen. She 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 spouse and father.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated September 3, 2004.* The AAO notes that the District Director erred in finding the applicant was eligible for a waiver under section 212(h) of the Act, as the applicant does not have a criminal record. As she admitted in her adjustment of status interview, the applicant entered the United States with someone else's passport. *Form I-485.* As such, the applicant is inadmissible under section 212(a)(6)(C) of the Act and is eligible for a waiver under section 212(i), not section 212(h).

On appeal, former counsel contends that the applicant's spouse would suffer extreme hardship if the applicant's spouse was removed from the United States. *Form I-290B; Attorney's brief.*

In support of his assertion, former counsel submits a brief. The record also includes, but is not limited to, two letters from [REDACTED], Valley View Family Medical Clinic, dated September 27, 2004 and May 20, 2005; a declaration from the applicant's spouse, dated September 27, 2004; an affidavit from the applicant's spouse, dated February 13, 2001; an affidavit from the applicant, dated February 13, 2001; an affidavit from the applicant's father, dated January 25, 2001; and tax statements for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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 reflects that the applicant admitted in her adjustment of status interview to procuring admission into the United States by fraud or willful misrepresentation of a material fact by using someone else's passport in 1991. *Form I-485*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse and U.S. citizen father if the applicant is removed. If 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, 565-566 (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 a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relatives must be established in the event that they reside in the Philippines or the United States, as they are 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 adjudication of this case.

If the applicant's spouse travels with the applicant to the Philippines, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the Philippines. *Form G-325A for the applicant's spouse*. The applicant's spouse has lived in the United States for eighteen years. *Affidavit from the applicant's spouse, dated February 13, 2001*. While the record notes that in 2001, the father, siblings, and cousins of the applicant's spouse lived in the United States, as of 2004, the applicant's spouse no longer had any immediate relatives living in the United States. *Affidavit from the applicant's spouse, dated February 13, 2001; Affidavit from the applicant's spouse, dated September 27, 2004*. The applicant's spouse stated he no longer has a home in the Philippines. *Id.* The AAO notes there is nothing in the record to show that the applicant and her spouse would be unable to find a new place to live in the Philippines. The applicant's spouse stated that the educational opportunities for his son are greater in the United States than they would be in the Philippines. *Id.* The AAO notes that the applicant's son is an adult (*see Form I-485*) and would not be required to go to the Philippines. Furthermore, the applicant's son is not a qualifying relative in this case. Although the applicant's spouse asserts that there is a lack of decent employment opportunities in the Philippines (*Affidavit from the applicant's spouse, dated February 13, 2001*), there are no country condition reports in the record confirming this assertion. The applicant's spouse suffers from a moderate shaking of the hands and involuntary movements, and he has been diagnosed with tremors and

Parkinson's disease. *Letters from [REDACTED], Valley View Family Medical Clinic, dated September 27, 2004 and May 20, 2005.* He also suffers from pain on his neck, knees, and legs. *Attorney's brief.* The applicant's spouse's doctor placed him on disability leave from September 27, 2004 to October 31, 2004, noting that he could return to work on November 1, 2004. *Letter from [REDACTED] Valley View Family Medical Clinic, dated September 27, 2004.* While the AAO acknowledges the applicant's spouse's health issues, it notes that his condition is non-life threatening and there is nothing in the record to demonstrate that the applicant's spouse would be unable to receive adequate treatment in the Philippines. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse continues to reside in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. At the time of filing, the applicant's spouse stated that he was unable to work due to his medical condition and that the applicant was fully employed. *Declaration of the applicant's spouse, dated September 27, 2004.* The applicant's spouse stated that he fully depended upon the applicant, and that she was the sole bread winner and has been responsible for all of their expenses. *Id.* While the AAO acknowledges the applicant's spouse's health condition, it AAO observes that the applicant's spouse's physician stated he could return to work on November 1, 2004. *Letter from [REDACTED] Valley View Family Medical Clinic, dated September 27, 2004.* Furthermore, there is nothing in the record to demonstrate that the applicant would be unable to sustain herself and contribute to her family's financial well-being from a location outside of the United States. The record notes that the applicant brought her spouse to all of his doctor's appointments (*Attorney's brief*), and in 2005 continued to assist her spouse. *Letter from [REDACTED] Valley View Family Medical Clinic, dated May 20, 2005.* Counsel asserts that the applicant's spouse should not be living alone, especially with his illness. *Attorney's brief.* The AAO observes that counsel's assertion that the applicant's spouse is unable to live alone due to his illness is unsupported by a licensed health professional. Furthermore, the record fails to address whether any other family members could assist in the caretaking of the applicant's spouse, specifically their adult son who lives with them. The applicant's spouse has suffered emotionally and has had difficulty sleeping due to the possibility of being separated from the applicant. *Attorney's brief.* The applicant's spouse stated that the emotional loss he would endure from being separated from the applicant is incomprehensible. *Affidavit of the applicant's spouse, dated February 13, 2001.* 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 removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

If the applicant's father travels with the applicant to the Philippines, the applicant needs to establish that her father will suffer extreme hardship. The applicant's father is eighty-eight years old. *Form G-325A for the applicant*. He is a native of the Philippines. *Id.* The record does not address what family ties, if any, the applicant's father may still have in the Philippines. The applicant's father suffers from health problems and has been diagnosed with hypertension. *Affidavit from the applicant's father, dated January 25, 2001*. The AAO notes that the record does not specify what additional health problems the applicant's father may have, nor does it include documentation from a licensed health professional regarding the condition of the applicant's father. While the AAO acknowledges the elderly age of the applicant's father, it notes that his health issues are non-life threatening and there is nothing in the record to demonstrate that he would be unable to receive adequate treatment in the Philippines. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her father if he were to reside in the Philippines.

If the applicant's father resides in the United States, the applicant needs to establish that her father will suffer extreme hardship. The applicant's father lives with the applicant, her spouse, and their son, and they take care of all of his needs. *Affidavit from the applicant's father, dated January 25, 2001*. The applicant's father stated that he relies upon the applicant to escort him in his daily chores such as shopping and other activities which he finds difficult to do by himself. *Id.* The AAO observes that the record fails to document whether the applicant's father has additional family members in the United States who could assist with his care. The applicant's father stated that the applicant and her spouse help him financially and their being in the Philippines would make it extremely difficult for them to contribute to his welfare. *Id.* The applicant's father feels he would suffer financially without their help. *Id.* While the AAO recognizes that the applicant's father may not be able to work due to his elderly age, it notes that there is nothing in the record to demonstrate that the applicant and her spouse would be unable to sustain themselves and contribute to their family's financial well-being from a location outside of the United States. The applicant's father stated that he has strong emotional attachments to the applicant and that he would be heartbroken if he could not attend church with her every Sunday. *Id.* As previously noted, 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 father 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 removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her father if he were to reside in 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) 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.