



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

JAN 09 2007

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) and Section
212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v)

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] (Mrs. [REDACTED]), is a native and citizen of the Philippines who entered the United States with a passport that did not belong to her on October 13, 1996 and applied to adjust her status to that of lawful permanent resident on July 24, 2000. She 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), for having sought to procure admission into the United States by fraud or willful misrepresentation. In order to remain in the United States with her U.S. citizen (USC) husband, [REDACTED] (Mr. [REDACTED]), the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

The record reflects that on October 13, 1996, Mrs. [REDACTED] sought entry into the United States by presenting a fraudulent passport to an officer of the Immigration and Naturalization Service. As a result of this misrepresentation, the district director found the applicant to be inadmissible to the United States. *District Director's decision*, dated December 2, 2004. The district director also found 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). *Id.*

On appeal, counsel for the applicant submits a brief and additional documentation. The record includes the following: the couple's marriage certificate; a statement of hardship from Mr. [REDACTED] work verification for Mr. [REDACTED] a United States Department of State *Public Announcement* for the Philippines, dated November 1, 2004, expiring on April 30, 2005; a United States Department of State Country Report on Human Rights Practices in the Philippines for 2003; proof of home ownership for the couple; a letter from Dr. [REDACTED] stating that Mrs. [REDACTED] is having trouble conceiving a child, dated December 9, 2004; proof that the couple is Catholic; a prescription for *Tegretol*; proof that the couple has health insurance; Mr. [REDACTED] U.S. birth certificate; photos of the couple and their family. The AAO reviewed the entire record in arriving at a decision on the appeal.

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.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident spouse or parent. Hardship to the applicant is only considered insofar as it may affect her qualifying relative, in this case, Mrs. ██████ USC husband.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties in 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.

“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).

Counsel asserts that relocation to the Philippines would result in extreme hardship to Mr. ██████ because he suffers from low blood sugar. *See prescription for Tegretol*. Counsel, however, failed to submit a letter from a health care professional, explaining what Tegretol is for and how relocating to the Philippines or being separated from Mrs. ██████ would affect any medical conditions he may have. Counsel also failed to provide documentation to establish that suitable medical care for Mr. ██████ would be prohibitively expensive or unavailable in the Philippines. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Mr. ██████ asserts that there is no work for him in the Philippines. Counsel points to country conditions documents that state that minimum wage in the Philippines is not a livable wage but does not explain why Mr. ██████ would only be able to find employment at the minimum wage and why Mrs. ██████ could also not work in the Philippines. While existing economic conditions in the Philippines are considerations in determining extreme hardship, the applicant has not submitted evidence of how these conditions would directly affect her husband. The applicant does not submit documentation demonstrating why someone in her husband’s situation would be unable to find employment in the Philippines or would only be able to find work at the minimum wage. *Matter of Soffici*.

Counsel asserts that Mr. ██████ cannot relocate to the Philippines because it would be dangerous for him. See *United States Department of State Public Announcement for the Philippines, dated November 1, 2004*. This announcement describes a threat of terrorist attacks in particular islands of the Philippines. Mr. ██████ has not established that if he and his wife relocated to the Philippines that they would have no choice but to reside in this section of the Philippines.

Counsel asserts that Mr. ██████ would suffer extreme hardship if he relocated to the Philippines because his entire family lives in the United States and if he remained in the United States separated from his wife.

Counsel asserts that Mr. [REDACTED] is exhibiting signs of depression as a result of the denial of his wife's Form I-601. Counsel did not submit objective, reliable documentation to supplement Mr. [REDACTED] claim of extreme psychological and emotional hardship. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although it is clear that her husband would suffer if she relocated to the Philippines and he remained in the United States, or if he leaves his job and family to go live in the Philippines, the Browns face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on Mr. [REDACTED] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), describing extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation; and *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), holding that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure hardship if he remains in the United States separated from the applicant, or relocates to the Philippines to avoid separation from her, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i). 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 rests 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.