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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:



Office: CHICAGO, ILLINOIS

Date: JAN 31 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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 is married to a naturalized U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust her status to that of 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 (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with her U.S. citizen husband and son.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to correctly analyze the facts and evidence in the case and misapplied the law regarding extreme hardship. Counsel maintains that the director isolated each factor involved in the extreme hardship determination rather than considering all the factors in the aggregate. The AAO, however, finds no indication in the record that the director failed to consider the cumulative effect of the factors presented. Counsel also contends that CIS erred in failing to consider the discretionary factors presented; however, given that the director did not find that extreme hardship had been established, there was no need to analyze any discretionary factors. Counsel submits country conditions reports about the Philippines, a psychological evaluation of the applicant's spouse, documents regarding the applicant's financial situation, and other evidence. The entire record was reviewed and considered 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 district director based the finding of inadmissibility under this section on the applicant's admitted use of a U.S. visa in another person's name to procure admission into the United States in 1992. Counsel does not contest the district director's determination of inadmissibility.

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).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act depends first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, she must demonstrate extreme hardship to her U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen child will therefore be considered in this analysis only insofar as it affects the hardship experienced by her spouse. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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, 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. *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).

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines to remain with the applicant, as he will be unable to readjust to life in his native country after having lived all of his adult life in the United States. Although the record includes a psychological evaluation prepared on May 18, 2005 by [REDACTED] Pys.D., the evaluation does not indicate that the applicant's husband would experience greater emotional trauma than others should he return to the Philippines. In this respect, the report focuses on the applicant's husband's concern regarding his economic well-being should he relocate to the Philippines.

Counsel maintains that the applicant's husband's age (forty one) coupled with the weak economy in the Philippines will make it impossible for him to find suitable employment there. Although counsel submits

Philippine government labor statistics reflecting a relatively high unemployment rate, there is no information specific to the applicant's spouse's situation. The record reflects that the applicant is an accountant, and her husband is a film based technician. The record does not show that the applicant's spouse, with his technical skills and his many years of U.S. employment, would be unable to find a suitable position in the Philippines. It should also be noted that a change in employment and/or economic status often accompanies relocation abroad as a result of removal and does not constitute extreme hardship.

Counsel also contends that if the applicant's spouse moves to the Philippines, his eight-year-old son will naturally accompany him, and the hardships his son will face there will directly affect the applicant's husband himself. Counsel points to U.S. Department of State reports warning U.S. citizen travelers of dangerous conditions in the Philippines, asserting that the applicant's spouse will experience extreme anxiety due to concern for his son's safety. However, the record does not indicate that Filipino-Americans are identified and singled out for ill-treatment. Counsel asserts that the applicant's son will experience psychological trauma if he is taken to live in the Philippines, and this will add to the applicant's husband's anxiety. The psychological evaluation of the applicant's son issued by Dr. [REDACTED] on July 10, 2004 notes that the child is normal and well-adjusted and is attached to his mother; there is no indication that the child would be somehow traumatized by a move to the Philippines.

Counsel stresses the economic difficulties the applicant's husband will experience if he remains in the United States without the applicant's financial contributions. As noted above, however, the record does not support the contention that the applicant, an accountant, would be unable to add to the family's finances from a location outside the United States. Upon review of the financial documents in the record, the AAO does not find that the applicant's husband would undergo extreme financial hardship if he had to support himself without the additional income provided by the applicant.

Counsel asserts that the applicant's husband would experience extreme emotional trauma in the applicant's absence, should he choose to remain in the United States without her. Dr. [REDACTED] indicated in her evaluation, which was apparently based on a single interview, that the applicant's husband stated that he would have no reason to live if the applicant were removed and he were left alone. Dr. [REDACTED] wrote that the applicant's husband is depressed and would be unable to withstand his wife's departure. Dr. [REDACTED] did not recommend any therapy or medication, however, nor did she provide specific information regarding the applicant's husband's prognosis. The AAO is unable to conclude, based on the evidence of record, that the applicant's husband's emotional difficulties would be greater than those suffered by others in his situation. Rather, the record indicates that he will face no greater hardship than the unfortunate, but expected, difficulties arising whenever a spouse is removed from the United States.

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). *Perez v. INS, supra*,

defined "extreme hardship" as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The evidence on the record does not establish that the applicant's husband would be unable to obtain employment in Philippines, or that he would experience extreme hardship in readjusting to life in that country. Also, there is no documentation establishing that the applicant's husband would suffer greater than usual emotional distress if the applicant were removed. The AAO does not disregard or take lightly the applicant's husband's concerns regarding the choices and changes he may face due to the applicant's inadmissibility; however, his experience is not demonstrably more negative than that of other spouses separated as a result of removal.

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.