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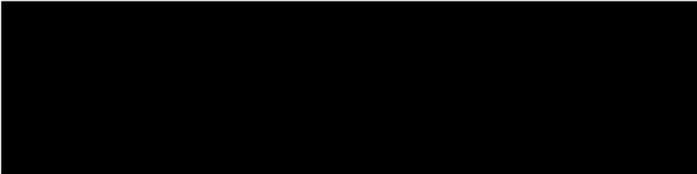
IN RE:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim 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)(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 on or about December 11, 1993. The applicant is the daughter of a lawful permanent resident and the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record contained no evidence to support a finding that the applicant's spouse and mother would experience hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly. *Decision of the Interim District Director*, dated May 9, 2003.

On appeal, counsel asserts that when a proper, detailed examination of the aggregate affect of the factors present in the applicant's waiver application is conducted, it is clear that the applicant has demonstrated the requisite extreme hardship. Counsel also asserts that cross application of standards for extreme hardship established for suspension of deportation cases is improper. He asserts that the differences between immigration fraud and crime dictate that the extreme hardship analysis established for suspension of deportation and section 212(h) cases cannot simply be transferred to cases involving section 212(i) of the Act. He asserts that other sections of the Act involving waivers for fraud do not require an extreme hardship component. He cites section 237(a)(1)(H) of the Act as an example. He then states further that given the history of waivers for inadmissibility and deportability for fraud and the present law, Congress never intended that this relief be of the same exceptional nature as suspension of deportation and section 212(h) relief. *Counsel's Brief*, dated July 2, 2003.

In this case, the record indicates that on or about December 11, 1993, the applicant presented a passport with a fraudulent I-551 stamp to gain entry into the United States in violation of section 212(a)(6)(C).

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 AAO finds counsel's assertions regarding the cross application of the extreme hardship standard unpersuasive. The statutory language for suspension of deportation cases, section 212(h) waiver applications and section 212(i) waiver applications all state that an applicant must show extreme hardship to a qualifying relative. Therefore, it is proper to apply the definition of extreme hardship across these cases.

In addition, counsel's assertions regarding Congressional intent in fraud cases are unpersuasive. Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. With the Immigration Marriage Fraud Amendments of 1986, the Congress expanded the reach of section 212(a)(6)(C)(i), as redesignated by the Immigration Act of 1990 (Pub. L. No. 101-649, to bar those who use fraud or misrepresentation from any benefit under the Act. In 1990, Congress added section 274C, 8 U.S.C. § 1324 to the Act (section 544 of the Immigration Act of 1990, *supra*), which states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act."

Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including:

[I]mpersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name . . . *See 18 U.S.C. § 1546.*

Therefore, Congress' desire was to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation and the applicant will be subject to extreme hardship standard in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences due to separation is not considered in section 212(i) waiver proceedings, except as it causes hardship to the applicant's spouse and/or parent. 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 *Cervantes-Gonzalez* the Board provided a list of factors it deemed 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 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

The AAO notes that extreme hardship to the applicant's spouse and/or mother must be established in the event that they reside in the Philippines or in the event that they reside in 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse and/or mother in the event that they reside in the Philippines. Counsel states that the applicant's spouse is 59 years old and has only lived and worked in the United States. He has no connections to the Philippines, he has never visited the Philippines and does not speak the Tagalog language. In addition, counsel states that the applicant's spouse suffers from allergies related to 14 different food items, high cholesterol, severe chronic headaches, and arthritis, and that he would be risking his health if he relocated to the Philippines. Counsel asserts that the applicant's spouse will not be able to obtain the medical attention he requires and if he relocates to the Philippines he will lose his current medical benefits, which are provided by his employer. Counsel states that because of the applicant's spouse's age he will not be able to find employment in the Philippines. *Counsel's Brief*, dated July 2, 2003. In addition, the applicant's spouse states that the applicant would not be able to find employment as a registered nurse in the Philippines and they would lose their health care. He also indicates that he was a mechanic, but recently retired. *Spouse's Supplemental Affidavit*, dated September 19, 2003. The applicant submitted a letter from Dr. Thomas Pham. Dr. Pham states that the applicant suffers from diabetes mellitus and is currently under medical treatment seeing him every 3 to 4 months. *Letter from* [REDACTED] dated August 6, 2003.

Counsel also explains in his brief that the applicant's daughter is a lawful permanent resident and the applicant's spouse considers her to be his child. He states that she is only 13 years old and would suffer if she had to relocate to the Philippines to be with the applicant. Counsel states that the applicant's spouse would suffer as a result of making the choice between losing both the applicant and his step-daughter or having his step-daughter separated from her mother. *Counsel's Brief*, dated July 2, 2003. The applicant's spouse states that he is an active part of his step-daughter's life. He takes her to extracurricular activities and cooks for her. *Spouse's Supplemental Affidavit*, dated September 19, 2003.

Counsel also submits a State Department Travel Advisory for the Philippines, which states that U.S. citizens faced terrorist threats and that while traveling in the Philippines they should exercise great caution and maintain heightened security awareness. *State Department Travel Advisory for the Philippines*, dated March 7, 2003. The applicant did not address the possibility of her mother relocating to the Philippines, so the AAO cannot find that she would suffer extreme hardship as a result.

In the current application counsel has not submitted documentation to support his assertions. There is no documentation in the record showing that a person in the applicant's spouse's situation would not be able to find employment in the Philippines or that he would not have access to adequate health care. No documentation was submitted showing that the applicant would not be able to find employment as a nurse in the Philippines. Thus, the record does not establish that the applicant's spouse would suffer hardship that rises to the level of extreme as a result of relocating to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse and/or mother remain in the United States. As stated above, counsel asserts that the applicant is allergic to 14 food allergies and in addition to these allergies he suffers from high cholesterol, severe chronic headaches and arthritis. Counsel states that the applicant is a registered nurse and prepares special meals for her spouse, monitors his medications and helps to control his cholesterol. The applicant is instrumental in easing her spouse's emotional and physical pain. *Counsel's Brief*, dated July 2, 2003. The applicant's spouse states that the applicant is a wonderful source of love, joy and support. She monitors his medications and diet and helps to perform chores around the house. He states that the applicant has two brothers and one sister also living in the United States and that the applicant's mother lives with them when she is not traveling to the Philippines. He states that the applicant dutifully cares for her mother who suffers from high blood pressure, chronic migraines, diabetes and arthritis. *Spouse's Supplemental Affidavit*, dated September 19, 2003. The AAO notes that no documentation was submitted to show that the applicant's mother could not be cared for by one of her other children in the applicant's absence and/or that the applicant's mother requires the applicant's care to maintain her well being. The record seems to indicate that the applicant's mother travels to the Philippines on her own, showing that she does not rely on the applicant to maintain her health. In addition, no medical documentation was submitted regarding the applicant's spouse's health problems and his dependence on the applicant for care.

In support of her application, the applicant submitted a psychological evaluation from [REDACTED] which is based on a single interview with the applicant and her spouse, lasting two hours. [REDACTED] found that the applicant's spouse appears to internalize his feelings, expressing them through aversive physical symptoms. She states that the Minnesota Multiphasic Personality Inventory-1 (MMPI-2) portrays a man who is depressed and expresses his depression with physical symptoms, such as chronic severe headaches. She found that the applicant's spouse's MMPI-2 MAC-R score, which measures one's potential for alcohol abuse is elevated. She states that this test result implies that if he were to suffer a major loss, such as the removal of his wife, he would be at a high risk for substance abuse. [REDACTED] also found that the applicant's spouse's Beck Depression Inventory illustrates a man who is struggling with depressive symptoms and the Thematic Apperception Test portrays a man who interprets life with underlying themes of sadness. She concludes that given the applicant's spouse attachment to the applicant, it is probable that he would suffer a major depression if the applicant is removed and given his age bracket would also be at risk for suicidal ideations. *Psychological Evaluation by [REDACTED]* dated August 1, 2003. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's spouse and [REDACTED]. Accordingly, the conclusions reached in the report do not reflect that insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship.

The AAO recognizes that the applicant's spouse will suffer hardship as a result of being separated from the applicant. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or mother 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(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.