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

PUBLIC COPY

712



FILE: [REDACTED] Office: MANILA, PHILIPPINES Date: JUL 23 2007

IN RE: [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), 8 U.S.C. section 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 Officer in Charge (OIC), Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Philippines who was found 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 attempted to procure admission to the United States by fraud or willful misrepresentation. 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 U.S. citizen spouse.

The record reflects that the applicant applied for admission to the United States at John F. Kennedy Airport on December 29, 1998 with a photo-substituted passport and nonimmigrant visa. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for having attempted to procure admission into the United States by fraud or misrepresentation, and section 212(a)(7)(A)(i)(I) of the Act, for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Accordingly, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1182(b)(1).

The applicant and her husband, [REDACTED] a native of the Philippines who became a naturalized U.S. citizen on June 16, 1994, were married in the Philippines on May 14, 1999. They have a daughter, [REDACTED], a U.S. citizen born in the Philippines on January 25, 2000. On July 16, 1999, the applicant's husband filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on August 16, 1999. On August 28, 2000, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601)¹.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated November 24, 2000.

On appeal, counsel asserts that the applicant's husband suffers extreme psychological hardship as a consequence of his separation from the applicant. The record contains an affidavit from the applicant's husband and two psychological evaluations from [REDACTED] of New York as evidence that extreme hardship will be imposed on the applicant's spouse if he continues to be separated from the applicant and their daughter.

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

¹ The applicant also filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) on September 12, 2001. That application was denied on September 28, 2001. *See Decision of OIC*, dated September 28, 2001. The applicant appealed the decision. In a decision dated March 28, 2006, the AAO found that it was unnecessary for the applicant to file Form I-212 as more than five years had elapsed since the applicant's removal, and the applicant was thus no longer inadmissible under section 212(a)(9)(A) of the Act as an alien seeking admission within five years of the date of her removal.

- (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 waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 to U.S. citizens or lawful permanent residents in the United States, family ties outside 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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant,

weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

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 his wife is refused admission.

In his affidavit dated March 31, 2007, [REDACTED] indicates that based on his interview with [REDACTED] on March 31, 2007, he diagnosed [REDACTED] as suffering from “Adjustment Disorder with Mixed Anxiety and Depressed Mood” as a consequence of his separation from his wife, a condition which can only be fully alleviated if he “liv[es] with his family in the United States.”² *Affidavit of* [REDACTED] p. 3, dated April 2, 2007. Dr. [REDACTED] observes that the [REDACTED]’s financial situation has allowed him to visit the Philippines only “every two or three years,” and that he is under “great strain” as a result of being separated from his wife and daughter. *Id.* at p. 2. [REDACTED] notes that [REDACTED]’s feeling of “isolation is as powerful as it was before he was remarried.” *Id.* at p. 3. [REDACTED] indicates, however, that the [REDACTED]’s abandonment by his first wife also contributes to the applicant’s present condition. *Id.* at p. 2.

The AAO recognizes that the applicant’s husband will continue to suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States. However, his situation is not atypical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Likewise, there is insufficient evidence demonstrating the applicant’s husband would suffer extreme hardship if he relocated to the Philippines. The only evidence consists of a statement by [REDACTED] that the applicant “has a secure, stable job with United Parcel Service, and does not feel that he would be able to find work in the Philippines.” *Affidavit of* [REDACTED] p. 3, dated April 2, 2007. Little weight can be afforded this

² In his affidavit dated November 10, 2003, [REDACTED] states that he diagnosed the applicant’s husband as suffering from “Major Depressive Disorder”. Although the AAO has considered the information contained in [REDACTED] 2003 affidavit, the AAO finds that [REDACTED] 2007 affidavit contains a more current assessment of the psychological impact on the applicant’s husband of his separation from the applicant.

assertion in the absence of specific supporting evidence. *See Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)). Accordingly, the AAO finds that the evidence submitted does not demonstrate that the qualifying relative in this case, the applicant’s husband, will suffer extreme hardship if he chooses to return to the Philippines to reside with his wife and daughter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval 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 denied.

ORDER: The appeal is dismissed.