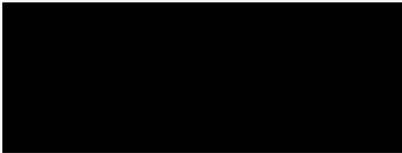




U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES, CALIFORNIA

Date: JUN 14 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.

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 is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust his status to that of lawful permanent resident (LPR); however, he 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).

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 thoroughly analyze the facts and evidence in the case. Counsel submits a brief but does not submit any additional evidence on appeal. The record includes financial and civil documentation for the applicant and his family, copies of photographs, letters of support, and an affidavit executed by the applicant's wife on June 7, 2002. The AAO has reviewed and considered the entire record in rendering this decision on appeal.

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 fraudulent passport to procure admission into the United States on April 9, 1991. 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 is dependent 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 his 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 children will therefore be considered in this analysis only insofar as it affects the hardship experienced by his 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 emotional trauma as a result of relocating to the Philippines to remain with the applicant as all of her immediate family reside in the United States. Counsel asserts that the applicant's spouse would also suffer because their children would have lesser educational opportunities and inferior medical care in the Philippines, noting that the applicant's eldest child suffers from asthma. Counsel cites the poor economic conditions and general instability in the Philippines as further reasons that the applicant's wife cannot relocate there. In her letter dated June 7, 2002, the applicant's wife wrote that she does not speak Tagalog and fears that she would not be able to obtain any employment similar to her current position as an accounting clerk.

The record does not contain evidence to establish the applicant's wife would have greater difficulty than other individuals in adapting to life her native country, nor does it establish that she or the applicant would be

unable to obtain employment in the Philippines. The AAO notes that a change in employment and/or economic status often accompanies a relocation abroad as a result of removal and does not constitute extreme hardship. The record does not show that the applicant's wife would suffer greater than usual emotional stress in the event she is separated from her parents and siblings in the United States. There is also no evidence showing that the applicant's children would suffer medical or other hardships to an extent that would cause his wife to suffer in the extreme.

Counsel also contends that the applicant's wife would suffer extreme hardship if she remains in the United States without the applicant. In her affidavit of June 7, 2002, the applicant's wife stated that she will experience extreme emotional trauma due to a separation from her husband and upon witnessing her children grow up without their father. There is no documentation on the record, however, establishing that the applicant's wife would suffer greater than usual emotional distress if the applicant were removed. The AAO does not disregard or take lightly the applicant's wife's concerns regarding the choices and changes she may face due to the applicant's inadmissibility; however, her experience is not demonstrably more negative than that of other spouses separated as a result of removal

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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, difficulties arising whenever a spouse is removed from the United State. 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.