



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: MANILA, PHILIPPINES

Date:

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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:

[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 waiver application was denied by the Acting Officer-in-Charge, 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 the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen. He 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 his spouse.

The Acting Officer-in-Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer-in-Charge*, dated April 7, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding the applicant inadmissible and in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit from the applicant's spouse, dated June 23, 2005; a certification from the Philippine postal corporation, dated May 20, 2005; and a United States government envelope showing an April 29, 2005 receipt date in the Philippines. The entire record was reviewed and considered in rendering this decision.

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.

Prior to addressing whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel asserts that the applicant is not inadmissible for overstating his income on the financial information that he submitted to obtain a visitor's visa for the United States. *Attorney's brief*. A travel agency assisted in the preparation of the applicant's paperwork and advised the applicant as to the correct amount of his income. *Id*. It was never the applicant's intention to mislead the government. *Id*. Counsel states that the applicant's misrepresentation was not willful, nor was it material as he was not likely

to become a public charge due to his short visit in the United States and that his current wife's (then girlfriend's) income was in excess of the poverty guidelines. *Id.* The applicant denies of having any knowledge of the fraud. However, he does state that a friend procured his supporting documentation, not that he went to a travel agent. *Form I-601 and Supplement.* The fact that an individual pursues a visa application through a travel agent does not serve to insulate the individual from liability for misrepresentations made by such agents, if it is established that the individual was aware of the action being taken in furtherance of the application. 9 FAM 40.63 N4.5. This standard would apply, for example, where a travel agent executed a visa application on an individual's behalf. *Id.* However, the record does not support counsel's claim that the applicant innocently violated U.S. immigration laws on the advice of a travel agent. *Supplement to the Form I-601.* In his waiver application, the applicant indicates that "a friend helped me [in] securing all my supporting documents for my tourist application." *Id.* Accordingly, counsel's assertions regarding the role a travel agent played in advising the applicant as to the appropriate financial documentation to submit in support of his nonimmigrant visa application will be discounted. Moreover, the submission of fraudulent supporting documents was not the only reason for the consular determination of inadmissibility regarding the applicant.

The record indicates that the applicant used a different middle name when he applied for a visa in 1995. The determination of materiality is a fact that would make the alien excludable or shut off a line of inquiry which may have resulted in exclusion. *Matter of S-& B-C-*, 9 I&N Dec. 436 (BIA 1960). The applicant misrepresented his identity to a Department of State consular officer in order to procure the benefit of entry to the United States. Prior to issuing a visa, a consular officer must make material inquiries as to whether any United States government agency possesses information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented his identity, he cut off these lines of inquiry. Due to the applicant's willful misrepresentation of material facts, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is found to be inadmissible. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that she resides in the Philippines or the United States, as she is 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.

If the applicant's spouse returns to the Philippines to reside with the applicant, the applicant needs to establish that his spouse would suffer extreme hardship. The applicant's spouse was born in the Philippines. *Form I-130*. She and the applicant were married in the Philippines and lived there in September 2003. *Id.* The record does not address what family members the applicant's spouse may have in the Philippines. The applicant's spouse has stated that her parents are deceased and apart from her husband and three children, she does not have any other relatives in the United States. *Affidavit of the applicant's spouse, dated June 23, 2005*. The applicant's spouse has indicated that she is currently working for the same company that employed her in 1995, but does not identify the organization. Counsel, however, states that the applicant's spouse is a nurse, employed by Medilodge of Sterling Heights, Michigan. *Id.* The record fails to address what financial impact the applicant's spouse would suffer, if any, if she resides in the Philippines. Furthermore, there is nothing in the record to demonstrate that the applicant and his spouse would be unable to sustain themselves and contribute to their family's financial well-being from a location outside of the United States. The record fails to address any health issues that the applicant's spouse may have and what type of medical care she could receive in the Philippines. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse would suffer extreme hardship. The applicant's spouse has stated that she and her children have suffered emotionally and spiritually by not having the applicant with them. *Affidavit of the applicant's spouse, dated June 23, 2005*. Counsel asserts that the applicant's spouse has suffered, for she and the applicant are not raising their children together as a family unit. *Attorney's brief*. 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. The AAO recognizes that the applicant's spouse has endured hardship as a result of her separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.