



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**  
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



H2

FILE:



Office: LOS ANGELES, CA

Date: MAR 12 2007

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 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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 spouse and U.S. citizen child.

The District Director 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 District Director*, dated October 29, 2004.

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

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, employment letters for the applicant and her spouse; tax statements for the applicant and her spouse; bank statements for the applicant and her spouse; earnings statements for the applicant and her spouse; a copy of the applicant's spouse's medical certificate; a statement from the applicant's spouse; a statement from [REDACTED]; and country conditions reports. 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.

The record reflects that the applicant used a Philippine passport bearing the name of another individual to enter the United States in 1999. *See photocopy of Philippine passport; Form I-94; Form I-485*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an 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's child or that the applicant herself 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 relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Hardship to the applicant's child will be considered only to the extent that it affects the applicant's child. 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 spouse must be established in the event that he resides in the Philippines or the United States, as he 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 travels with the applicant to the Philippines, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse has lived in the United States his entire life. See *birth certificate; statement from the applicant's spouse*, dated September 12, 2001. All of his immediate relatives are U.S. citizens and living in California. *Statement from the applicant's spouse*, dated September 12, 2001. His extended family, such as his aunts and uncles, also live in California. *Id.* The applicant's spouse has never lived in another country for an extended period of time. *Id.* His native language is English and he speaks some Spanish, but he cannot speak Tagalog in which the national language of Filipino is based. *Id.* Although the applicant's spouse states his parents are aging and their health is deteriorating, the record fails to include medical documentation supporting these assertions, nor does it include information as to how the parents of the applicant's spouse may be dependent upon him. The applicant's spouse is a medical doctor, specializing in pediatrics. *Id.*; See *Also employment letters for the applicant's spouse*, dated November 22, 2004, July 6, 2001, and July 5, 2001. The applicant's spouse contends that if he moves to the Philippines, he would not be able to practice medicine without having to start his medical studies again. *Statement from the applicant's spouse*, dated September 12, 2001. The applicant's spouse stated it would be very difficult for him to do this, particularly because he does not speak Tagalog. *Id.* The AAO notes that instruction at Philippine medical schools is conducted in English and that the great majority of Filipinos can understand and communicate in the English language. See ValueMD Medical Schools Forum ([www.valuemd.com/asian-medical-schools/16196-philippines-medical-schools.html](http://www.valuemd.com/asian-medical-schools/16196-philippines-medical-schools.html)); "English erosion hurts Philippines," *Tapei Times*, November 28, 2006. Nevertheless, it finds that, moving to the Philippines where he would not be licensed to practice his profession, would constitute a significant career setback for the applicant's spouse. His lack of

Tagalog language skills would also be likely to affect his ability to practice pediatric medicine, as English-language proficiency in school age children has declined since 1987 when Tagalog began to be commonly taught. *Taipei Times*, November 28, 2006. When considered in combination with the fact that the applicant's spouse was born and raised in the United States, has no family in the Philippines and has never lived outside the United States for an extended period of time, the loss of his medical career, even if temporary, rises to the level of extreme hardship. The applicant has demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, all of the family of the applicant's spouse lives in the United States. *Statement from the applicant's spouse*, dated September 12, 2001. The applicant's spouse is suffering from severe depression, anxiety, sleep disturbance, and stress because of the possibility that he may be separated from his spouse. *Statement from [REDACTED]* dated August 31, 2001. According to [REDACTED], his ability to concentrate at work has been compromised. *Id.* The AAO notes that while the record includes letters of employment for the applicant's spouse, these letters fail to explain how the work of the applicant's spouse has been compromised due to his mental state. *See employment letters for the applicant's spouse*, dated November 22, 2004, July 6, 2001, and July 5, 2001. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depression and anxiety suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering the therapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. While counsel acknowledges that the U.S. citizen child is not a qualifying relative in this case, he also asserts that the applicant's spouse is not capable of being a single-father to an infant, and the U.S. citizen child would therefore have to accompany his mother to the Philippines. The loss of his child would constitute an extreme hardship for the applicant's spouse. *Attorney's brief.* The AAO observes that the record does not demonstrate that other family members would be unable to assist with the responsibilities of taking care of his child in the United States or that the applicant's spouse could not afford child care. Moreover, the record offers no evidence in support of counsel's statement that separation from his son would constitute extreme hardship for the applicant's spouse. Neither the statement of the applicant's spouse nor that of [REDACTED] address the possibility of his son's relocation to the Philippines, as both predate the child's birth. Without supporting documentary evidence, the assertions of counsel are not sufficient to meet the applicant's evidentiary burden in those proceedings. The assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also fails to document what additional expenses the applicant's spouse would incur, if any, in the event that he remained in the United States and how this would affect him on a financial level, particularly when taking into account that he is a medical doctor earning a substantial income.

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. Separation from a loved one is a normal part of the removal process. In this particular case, the applicant has not shown that his emotional hardship is beyond that endured by others in similar situations. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical of 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 her spouse if he were to reside in 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(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.