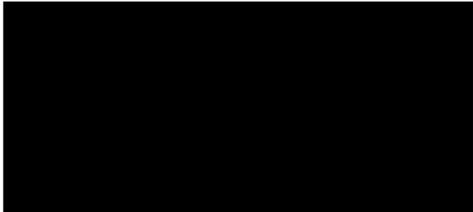




U.S. Citizenship
and Immigration
Services

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

H2



FILE:



Office: MANILA, PHILIPPINES

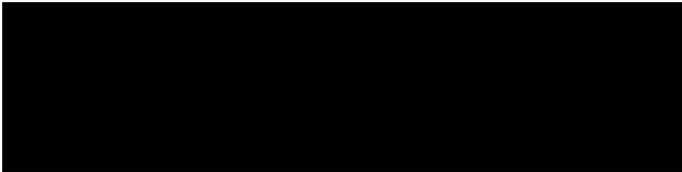
Date: MAR 12 2007

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 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 Tonga 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 lawful permanent resident of the United States 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 sons.

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 14, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred 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 statement. The AAO notes that the Form I-290B indicates counsel's intent to submit a brief and/or evidence to the AAO within 90 days of filing. The record does not, however, contain these materials and counsel has not responded to the AAO's request for a copy of them. Therefore, the record is considered complete. In addition to counsel statement, the record also includes, but is not limited to, a statement from the applicant's spouse, dated June 15, 2004; a statement from the applicant, dated May 27, 2004; a statement from the applicant's mother-in-law, dated April 5, 2004; and a statement from the applicant's brother, dated May 25, 2004. 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship

to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that during a 1994 interview with a consular officer, the applicant admitted that she entered the United States in 1987 on a nonimmigrant visa when it was her intention to reside permanently in the United States with her husband, a lawful permanent resident. *Consular memorandum*, dated November 10, 2004; *Department of State Optional Form I-94*, dated January 26, 1995. The applicant states that she entered the United States for the purposes of her honeymoon and initially was planning to return to her native country of Tonga, as she had only taken three months leave from work. *Statement from the applicant*, dated May 27, 2004. While the AAO acknowledges the applicant's statement, it notes that the record fails to include any documentary evidence supporting her assertions. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici*, 22 I. & N. Dec. 158 (BIA 1998). Moreover, her statement conflicts with the consular memorandum. As such, the AAO finds that the applicant is 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 children or that the applicant herself would experience is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i) except in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B) of the Act, which both relate to petitions granted to battered spouses. The applicant does not fall into that category. The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant's waiver application is denied. Any hardship to the applicant's children will be considered only to the extent of its effect on the applicant's spouse. 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 Tonga 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 Tonga, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Tonga and his parents live there. *Form G-*

325A for the applicant's spouse. The applicant's spouse continues to have citizenship in Tonga. *Id.* The applicant's spouse has a business based in Tonga and frequently travels between Tonga and the United States for business purposes. *Statement from the applicant*, dated May 27, 2004; *Statement from the applicant's spouse*, dated June 15, 2004. The applicant and her spouse have two U.S. citizen sons who live with their uncle and aunt in the United States. *Statement from the applicant's spouse*, dated June 15, 2004. The applicant's spouse stated that whenever he is in the United States on business, he always spends time with his sons. *Id.* Based on this statement and the fact that the boys live with their aunt and uncle, the AAO concludes that the applicant's spouse already spends much of his time in Tonga. The record includes statements from various family members as to how the children will be affected if their immediate family is not reunited. *See statement from the applicant's mother-in-law*, dated April 5, 2004; *statement from the applicant's brother*, dated May 25, 2004. The AAO notes that the U.S. citizen children are not qualifying relatives in this case and no evidence in the record addresses the effect of the children's separation from their mother or their father. Further, as the children live with their aunt and uncle, their physical care does not appear to be a matter of concern for the applicant's spouse. 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 Tonga.

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, two of the sons of the applicant are U.S. citizens and her spouse is a lawful permanent resident, all of whom live in the United States. *Statement from the applicant*, dated May 27, 2004; *Statement from the applicant's spouse*, dated June 15, 2004. The applicant and her spouse have been married for 19 years. *Form I-130*. While separation from a loved one is always difficult, 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 will endure hardship as a result of separation from the applicant. However, the record offers no evidence to establish that his situation, if he remains in the United States, would be atypical of individuals separated as a result of removal. When looking at the aforementioned factors, the AAO does not find that the applicant 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.