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FILE:



Office: MANILA, THE 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: Self-represented

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 Officer in Charge, Manila, the Philippines, denied the waiver application, and it 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 pursuant to 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 a visa to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen. She 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.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated June 28, 2005.

The record reflects that, on November 28, 2001, the applicant presented fraudulent financial documentation with an application for a United States visitor's visa. On January 7, 2003, the applicant married her spouse, [REDACTED]. On February 27, 2003, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 17, 2003, [REDACTED] filed a Petition for Alien Fiancé(e) (Form I-129F), which was approved on January 13, 2004. On June 8, 2004, the Form I-130 was approved. On October 19, 2004, the applicant filed an Application for Immigrant Visa and Alien Registration (Form DS-230). On April 13, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, the applicant contends that the evidence submitted with the Form I-601 established that her spouse would suffer extreme hardship. *See Applicant's Brief*, dated July 26, 2005. In support of her contentions, the applicant submitted the referenced brief, medical documentation for her spouse and financial and employment-related documentation. The entire record was reviewed in rendering a decision in this case.

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

- (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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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 officer in charge based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission to and records reflecting her attempt to obtain a visa to the United States by fraud in 2001. On appeal, the applicant does not contest the officer in charge's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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 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. 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).

[REDACTED] is a native of the Philippines who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 2001. The applicant and [REDACTED] do not have any children. The record indicates that the applicant is in her 30's, [REDACTED] is in his 40's, and [REDACTED] may have some health concerns.

The applicant asserts that, even without documentation to establish [REDACTED] medical condition, the officer in charge should not have dismissed his ailments as if they were contrived because he had submitted a statement made under penalty of perjury. The AAO notes that [REDACTED] s statement is not executed by [REDACTED] nor is it certified. However, the AAO will consider all statements contained therein as

statements made by [REDACTED]. The AAO also finds the applicant's argument to be unpersuasive. A statement by [REDACTED] is insufficient evidence to find that he suffers from a mental or physical illness that would cause him to suffer extreme hardship or to find that such an illness was caused or exacerbated by the applicant's immigration situation.

The applicant contends that [REDACTED]'s sworn statement established that he would suffer more than the "common results of separation, financial difficulties, etc." The applicant asserts that [REDACTED] hypertension was brought about by the stress and anxiety relating to his wife's immigration situation. Mr. [REDACTED] in his affidavit, states that, since the applicant's waiver was denied, he has been stressed out and suffering from hypertension. He states that the stress of separation is taking its toll on him and he works 10 hours a day in order to keep his mind off the problem. He states that he can only stay in the Philippines with his wife for a period of three weeks each year because he could lose his job if he remains longer in the Philippines.

Medical documentation indicates that [REDACTED] is being treated for hypertension, for which he has been placed on medication. While the medical documentation indicates that [REDACTED] has hypertension for which he is prescribed medication, the documentation does not provide information in regard to the effect of this condition on his ability to perform his responsibilities, whether he requires long-term medical care or what the prognosis is for his condition. The medical evidence does not indicate that [REDACTED] illness is related to the applicant's immigration situation or that his treatment requires the presence of the applicant or that he would be unable to receive appropriate medical treatment in the absence of the applicant.

Financial records report that [REDACTED] earns more than \$27,000 per year without overtime. While the medical documentation indicates that [REDACTED] suffers from hypertension, it does not, as previously noted, establish that [REDACTED] is unable to perform his work duties or daily activities due to his medical condition or that the applicant's absence would result in his inability to function on a daily basis. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned sufficient income to more than exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While [REDACTED] may have to lower his standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support himself without income from the applicant, even when combined with the emotional hardship described below.

As discussed above, there is no evidence in the record to confirm that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. It is unfortunate that [REDACTED] will be separated from the applicant. However, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal.

The applicant asserts that [REDACTED] has hypertension brought on by the stress and anxiety of the fear for his life due to the threat of violence and terrorism, his inability to obtain comparable employment and the deprivation of health care benefits if he joined the applicant in the Philippines. The applicant states that Mr. [REDACTED] would be subject to age discrimination in the hiring process in the Philippines and that the officer in charge dismissed [REDACTED]'s concerns regarding his safety in the Philippines because the

State Department travel warnings are merely advisory in nature. The applicant asserts that the Philippines is a country divided by the Church, middle class, business and the military, leaving the country prone to a military takeover, which is a constant threat. The applicant asserts that [REDACTED] receives health insurance through his current employer and that he would be unable to obtain the same health and life insurance coverage in the Philippines. [REDACTED], in his affidavit, states that he cannot stay in the Philippines for more than three weeks, not only because of the vacation limits placed upon him by his U.S. employer, but also because of the fear that he is exposed to the danger of terrorist attacks. He states that he cannot find a job in the Philippines that would pay him the same wages he is currently receiving and that job advertisements in the Philippines set an age limit for applicants. He also states that he would be deprived of health care benefits in the Philippines, which he will need more as he gets older.

Having analyzed the hardships [REDACTED] and the applicant claim [REDACTED] would suffer if he were to accompany the applicant to the Philippines, the AAO finds that they do not constitute extreme hardship. They assert that [REDACTED] would not be able to find employment in the Philippines that was comparable to his employment in the United States. There is no evidence in the record that the applicant and [REDACTED] would be unable to find *any* employment in the Philippines. Economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. The applicant asserts that the military pose a threat to the political structure of the Philippines and that [REDACTED] safety is threatened because of violence and terrorism in the Philippines. However, the record contains no evidence concerning country conditions or travel warnings for the Philippines to support this claim. While the hardships that would be faced by [REDACTED] with regard to relocating to the Philippines--readjusting to the Philippine culture, economy and environment; separation from friends and family; a potentially reduced quality of health care; and lack of health care comparable to that available in the United State--are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Additionally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an application for waiver of grounds of inadmissibility under section 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.