



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

H2

MAR 16 2007

FILE:

Office: LOS ANGELES, CA

Date:

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 (U.S.) 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 procured admission into the United States by fraud or willful misrepresentation on April 16, 1997. 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).

The district director concluded that the assertions provided in the affidavit of the applicant's spouse and the evidence in the record did not support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated November 30, 2004.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. Counsel states that the applicant would suffer extreme hardship as a result of relocating to the Philippines and that the District Director failed to seriously consider the emotional hardship the applicant's spouse would suffer. Counsel also states that the Director failed to consider the hardships faced by the applicant's spouse according to the totality of the circumstances. *Counsel's Brief*, dated December 26, 2004.

The record indicates that on April 16, 1997, the applicant presented a Filipino passport and B-2 Visitor's Visa in the name of [REDACTED] in an attempt to gain entry into the United States.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien himself experiences due to

separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

*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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Philippines or in the event that she resides in 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.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Philippines. Counsel asserts in his brief that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines. The applicant's spouse states that her parents are both lawful permanent residents and that her four siblings live in the United States. *Spouse's Affidavit*, dated January 10, 2002. The applicant's spouse also states that she has a well paying job with [REDACTED] Family Dentistry and that she would not be able to find a similar job in the Philippines. She states that there are very few dental assistant jobs in the Philippines and that the applicant would also not be able to find employment in office work because of the poor economic conditions in the country. The applicant's spouse states further

that she is fully assimilated into United States' culture and her child is a U.S. citizen. Counsel states that the applicant's spouse does not want to deprive her child of the educational opportunities in the United States. The AAO notes that although the applicant's spouse has been residing in the United States for the last twelve years, she spent the first twenty years of her life in the Philippines. Thus, the applicant's spouse is familiar with the culture and language of the Philippines and the record does not establish that she would suffer emotional hardship that would rise to the level of extreme as a result of relocation. In addition, counsel failed to submit any documentation to support the statements regarding the economic conditions or the lack of employment and educational opportunities in the Philippines. The record contains no evidence to show that the applicant would not be able to find employment in an office in the Philippines or that the applicant's spouse would not be able to find employment as a dental assistant. The record also contains no evidence to show that the applicant's child would not have educational opportunities in the Philippines. The AAO notes that hardship to the applicant's U.S. citizen child is not considered in section 212(i) waiver proceedings unless it is established that the hardship to the child would cause extreme hardship to the applicant's spouse. Counsel failed to establish this connection between the child's hardship and that of the applicant's spouse. Therefore, the AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she will suffer extreme emotional hardship if the applicant is removed from the United States. In his brief, counsel states that the applicant's spouse will suffer emotional and financial hardships as a result of being separated from the applicant. In support of his assertions regarding the applicant's spouse's emotional hardship, counsel submitted a medical evaluation from [REDACTED]. In her letter, [REDACTED] states that the applicant's spouse started treatment with her on December 16, 2004 and is being seen for anxiety and depression. [REDACTED] Letter, dated December 20, 2004. [REDACTED] states that since the applicant's spouse learned of her husband's permanent residency denial, she has been depressed, unable to sleep, "anhedonic" and distraught at the thought of her son having to grow up without his father. [REDACTED] asks that the Immigration Service allow the family to continue to function as an intact family and raise their son with two parents. The record also contains a letter from [REDACTED] which states that the applicant's spouse sought outpatient psychiatric care for signs and symptoms of depression. [REDACTED] Letter, dated February 4, 2002. [REDACTED] states that it was his clinical impression that the applicant's spouse was exceedingly vulnerable and desperate for the presence of her husband and if they were to be separated it would have a devastating effect on her mental health. He recommends, on medical grounds, that the Immigration Service consider helping the applicant's spouse so that she will not have to be separated from her husband. Although the input of any medical or mental health professional is respected and valuable, the AAO notes that the submitted reports are based on single interviews, more than two years apart. The record fails to reflect any ongoing relationship between the applicant's spouse and either of the medical professionals who submitted documentation. Neither letter reports any history of treatment for the depression that's identified as being suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted reports, being based on two separate self-reporting interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist and/or medical doctor, thereby rendering [REDACTED] and [REDACTED]'s findings speculative, diminishing the letters' value in determining extreme hardship.

With respect to the financial hardship suffered by the applicant, counsel submitted various financial statements showing that the applicant and his spouse both contribute to the financial well being of the family. Counsel also states that the applicant's spouse and her child would lose their health insurance if the applicant is removed from the United States. Counsel submitted copies of the family's health insurance cards showing that the applicant's spouse and their child are under the applicant's health insurance plan through his employer. Counsel did not provide documentation to show that the applicant's spouse would not be able to receive health insurance from another source, including her employer, [REDACTED] Family Dentistry. Furthermore, counsel failed to establish that the applicant would not be able to find employment in the Philippines and help his family financially from abroad or that the applicant's spouse would be unable to receive financial assistance from her parents and four siblings, who all live in the Los Angeles area. Thus, the record does not establish that the applicant would suffer extreme financial hardship as a result of being separated from the applicant.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the current record reflects that her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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(i) 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.