



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H2

MAY 04 2007

FILE:

Office: LOS ANGELES, CA

Date:

IN RE:

PETITION: 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 PETITIONER:

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, CA, 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 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 entering into the United States by fraud or willful misrepresentation. The applicant, who is the son of naturalized citizen parents, sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The district director denied the application for waiver of inadmissibility, finding that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, in this case his parents, and the applicant appealed the decision.

On appeal, counsel references the medical records and declarations of the applicant's parents to establish the extreme hardship requirement.

In rendering this decision, the AAO has considered the entire record of proceeding.

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 chapter is inadmissible.

....

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

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 in a sworn and signed statement on September 29, 2004 the applicant revealed that he entered the United States in May 1996 using a passport and visa with an assumed identify. *Record of Sworn*

Statement in Affidavit Form. The director correctly found him inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant seeks a waiver of inadmissibility. 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. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in the present case are the applicant's parents. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that are relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

The AAO will now apply the *Cervantes-Gonzalez* factors here in determining extreme hardship to the applicant's husband. Extreme hardship to the applicant's parents must be established in the event that they remain in the United States; and in the alternative, that they accompany the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The declaration of Mr. [REDACTED] the applicant's father, states the following. He is a U.S. citizen and 79 years old. He lives with his U.S. citizen spouse [REDACTED] who is 74 years old. They have six adult children, four of whom live in the United States.¹ Of the four, two are U.S. citizens and two are citizens of the Philippines. He has two adult children who live in the Philippines and are Philippine citizens. He suffers from benign prostatic hypertrophy, DJD to joint pain, hyperglycemia, and hypercholesterolemia. The diseases and ailments that he suffers from severely affect his physical and mental condition and impair his movement. The applicant has regularly provided daily assistance with food and hygiene. His son is providing \$700 each month to cover his and his wife's food, medical, and utility expenses. His son and daughters living in the United States tend to their personal and family needs. If the applicant's waiver is denied, he will have unusual and extreme hardship because he will be required to haggle time and support with his other children in the United States, who have their own personal, monetary, and family obligations. *Declaration of Mr. [REDACTED] dated December 22, 2004.*

The declaration of the applicant's mother is similar to that of her husband's except that she suffers from hypertension, osteoporosis, dyslipidemia, GERD, MR, RBBB, DJD and cardiac arrhythmias. *Declaration of Ms. [REDACTED] dated December 22, 2004.*

The record contains two letters from [REDACTED], M.D., which describe the physical ailments of the applicant's parents. The letters indicate that the applicant's parents take medication that requires accurate supervision.

The record does not establish that the applicant's parents will endure extreme hardship if they remain the United States without the applicant.

Financial impact is a hardship consideration. However, the record as constituted contains no evidence establishing that the applicant's monthly financial contribution of \$700 is necessary for his parents to meet their monthly household expenses. The record contains no evidence of the household expenses and income of the applicant's parents. It contains no evidence showing that the family members who live in the United States are unable to financially support their parents. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450

¹ The applicant's father describes the applicant as a Philippine national residing in the United States.

U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The letters from [REDACTED] M.D. indicate that the applicant's parents take medication that requires accurate supervision. The applicant's parents have a 48-year-old son, [REDACTED] who lives nearby in the same community. No evidence in the record has been submitted to show that [REDACTED] or his sisters are unable to provide emotional and other support for their parents, such as assisting with medication. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The applicant's parents attest to the care he has provided. The AAO is mindful of and sympathetic to the emotional hardship the applicant's parents will undoubtedly endure by separation from their son. However, the AAO finds that their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra*. The applicant's parents, however, will not be alone in the country; they have daughters in the country and a son who resides in their community.

The record does not indicate that the applicant's parents will endure extreme hardship if they join him in the Philippines.

The conditions of the country to which the alien and his or her family will be returning are relevant in determining hardship. However, general economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit stated that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra*. In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and the loss of group medical insurance did not reach "extreme hardship." As previously stated, the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang, supra*.

Here, there is no evidence in the record that specifically conveys that the applicant will not find employment in the Philippines. The applicant's parents have health problems. But the record does not establish that medical treatment for their health conditions is unavailable in the Philippines. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their

totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.