



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: **MAY 15 2007**

IN RE:

[REDACTED]

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:

[REDACTED]

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 October 28, 1994. 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 there was no evidence in the record to 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 October 29, 2004.

On appeal, counsel asserts that the director abused her discretion in not considering all pertinent facts regarding extreme hardship to the applicant's spouse and in not articulating the reasons for denying admission. Counsel states that the Service completely ignored the waiver application and the 100 pages of supporting documentation submitted with the application. He requests that the waiver application be reconsidered. *Counsel's Brief*, dated November 23, 2004.

The AAO notes that the director cited the incorrect section of law in applicant's waiver application decision. The director's decision states that the applicant is subject to section 212(h) waiver proceedings. This statement is incorrect as the applicant was not found inadmissible for committing a crime of moral turpitude, but was found inadmissible based on a misrepresentation she made to procure admission to the United States. Therefore, the applicant is subject to section 212(i) waiver proceedings.

The record indicates that on October 28, 2004, the applicant presented a Filipino passport and B-2 Visitor's Visa with a false name and birth date to procure 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 herself 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.

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). 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 he resides in the Philippines or in the event that he resides in 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in the Philippines. The applicant's spouse states that he would face extreme emotional and financial hardship if he were to relocate to the United States. *Spouse's Affidavit*, dated August 28, 2001. The

applicant's spouse states that he was born and raised in the United States and his entire family resides in the United States. He states that he is very close to his family and if he were to relocate to the Philippines he would constantly be worrying about the health and well being of his elderly parents and grandfather. The applicant's spouse asserts that he cannot speak Tagalog and would not be able to find employment in the Philippines. He states that he has been in the law enforcement field for most of his career and the unemployment rate in the Philippines as well as his age would make it impossible for him to find employment in his field. In support of these assertions, the applicant's spouse submitted various employment letters from throughout his career and country condition reports. However, the AAO notes that the 2002 State Department Human Rights Report for the Philippines was general in nature and did not specifically address the applicant's spouse's situation. A public announcement from the States Department, dated November 18, 2004, was also submitted. In this announcement the State Department cautions Americans about traveling to the Philippines because of security concerns and terrorist groups, but does not make any statements about employment opportunities. The AAO will consider the statements made in regards to safety concerns in the Philippines and how these concerns would affect the applicant's spouse upon relocation. In addition, the applicant's spouse states that he is a recovering alcoholic who attends biweekly Alcoholics Anonymous (AA) meetings. He states that he suffered from alcoholism for 15 years and has been sober for over 14 years. He states that if he were to leave his family and the support network he has through AA, his whole world would be torn to pieces. Counsel asserts that if the applicant's spouse were to relocate to the Philippines he would not be able to attend his bi-weekly AA meetings and would lose the source of his continued recovery efforts. In support of these statements the applicant's spouse submitted letters from two friends in his support network at AA, [REDACTED] and [REDACTED]. The letter from [REDACTED], describes the "AA Fellowship" and how a recovering alcoholic requires the constant assistance of fellow AA members. *Letter from Mr. [REDACTED]* dated July 29, 2001. The applicant's spouse is Mr. [REDACTED] AA Sponsor and interacts with Mr. [REDACTED] on a daily basis. The applicant's spouse also submitted a "Brief Guide to Alcoholics Anonymous". Another concern that the applicant's spouse expresses about relocation to the Philippines is his ability to attend Jewish religious services in the Philippines. The applicant's spouse states that because the Philippines is a predominantly Catholic country he would not be able to attend synagogue. The AAO notes that no documentation was submitted to support this statement.

Although, the record does not contain documentation to support all of the applicant's spouse's assertions regarding the extreme hardship he would suffer in relocating to the Philippines, the AAO finds that his history of alcoholism and extensive ties to the United States establish that he would suffer extreme hardship upon relocation. The AAO finds that eliminating the applicant's spouse's support network in the United States and separating him from his family and employment would result in extreme hardship.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he would suffer extreme emotional hardship as a result of being separated from the applicant. *Spouse's Affidavit*, dated August 28, 2001. He states that being away from the applicant for any period of time would cause him an incredible amount of distress and heartache. The applicant's spouse asserts that he is prone to panic attacks and that this anxiety over time has caused high blood pressure. He has been on blood pressure medication since August 2000 and also takes anti-anxiety medication. In his affidavit, the applicant's spouse states that the applicant provides him with care and helps him with his diet. To support these statements, the applicant submitted a letter from her spouse's doctor, Dr. [REDACTED]. Dr. [REDACTED] states that the applicant's spouse suffers from hypertension

and is currently on Lotensin, 10mg once a day, for the condition. *Letter from Dr. [REDACTED]*, dated July 27, 2001. Dr. [REDACTED] does not mention the anxiety attacks suffered by the applicant's spouse or how separation from the applicant may affect this condition. The record does contain a prescription slip for a drug called Celexa., *Prescription Slip from Dr. [REDACTED]* dated August 27, 2001. However, the record contains no indication of what this medication is for. In addition, as mentioned above, the applicant's spouse suffers from alcoholism and attends AA meetings on a regular basis. In his brief, counsel states that as a recovering alcoholic the applicant's spouse depends on the support network that he has built to deal with his addiction. Counsel states that the applicant is a part of this support network and if she was unable to continue living with the applicant then his world would be in disarray and he would experience extreme hardship. The applicant's spouse also states that he owes his sobriety to his wife. *Spouse's Affidavit*, dated August 28, 2001. However, the applicant's spouse also states that he met the applicant in 1996 and has been sober for over 14 years. *Id.* He made this statement in 2001 indicating that his sobriety started in 1987 or 9 years before he met the applicant. The record does not establish the extent the applicant's spouse relies on the applicant for his sobriety. Finally, the applicant's spouse states that he and the applicant hope to have a child and the separation from the applicant would cause him extreme hardship because he would not be able to start a family. The applicant did not submit documentation showing the extent of the emotional hardship caused by her spouse not being able to start a family. The AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of being separated from the applicant.

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 she 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.