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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H₂

PUBLIC COPY

[Redacted]

FILE:

Office: SAN FRANCISCO (SACRAMENTO)

Date: MAY 23 2007

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. [REDACTED] is the spouse of a lawful permanent resident of the United States (LPR), [REDACTED] and he 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 his wife and U.S. citizen child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative, [REDACTED] and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, April 5, 2005.

On appeal, counsel for the applicant stated that the District Director failed to follow BIA precedent in not granting a waiver of inadmissibility despite evidence that removal would result in extreme hardship to the applicant's LPR spouse. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290-B)*, May 6, 2005. It is noted that counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on May 6, 2005. However, as of May 9, 2007, the AAO had received no further documentation or correspondence from the applicant or counsel. On May 9, 2007, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing; counsel responded that no additional evidence would be submitted. The record is deemed complete.

The record includes (1) a Record of Sworn Statement by [REDACTED] dated September 1, 2004, indicating that he used a fraudulent document to obtain a visa in Manila and used that visa when he last entered the United States on December 11, 1997; (2) the applicant's birth certificate, marriage certificate and biographic information (Form G-325A); (3) Wage and Tax Statements (form W-2) for the applicant and his wife, the most recent for 2002; (4) a statement by [REDACTED] explaining the circumstances of her visit to the United States in 1994 on a tourist visa, the birth of their daughter in January 1995, and unsuccessful attempts by the applicant to join them in the United States until he finally obtained a fraudulent visa; she states that she would have no choice but to join her husband in the Philippines if he were forced to return there, but that she would lose her job, and their daughter would have to grow up in the Philippines; and (5) a letter from Keslar, Elliott & Associates, Psychological Services, dated November 15, 2004, stating that [REDACTED] had two sessions with [REDACTED], MFT, RN, who indicated that [REDACTED] "presented as being very depressed" and stated that she felt "very anxious that her husband will leave the country and return to the Philippines," that she was losing sleep, was beginning to have what appeared to be "panic" attacks, and that her constant worrying was interfering with her quality of work and life and straining her marriage. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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:

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

Regarding the District Director's finding that the applicant is inadmissible, the record reflects that Mr. [REDACTED] admitted that he entered the United States in December 1997 by using a visa that did not reflect his true identity. The applicant, therefore, fraudulently procured admission to the United States. The District Director accordingly correctly determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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 suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

This matter arises in the San Francisco District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that she accompanies him and resides in the Philippines or in the event that she remains 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. [REDACTED] has indicated that she and their daughter would join [REDACTED] in the Philippines if he were forced to leave the United States.

In this case, the record reflects that [REDACTED] was born in the Philippines in 1968 and lived there until 1997, when he came to the United States; [REDACTED] was born in the Philippines in 1959 and came to the United States in 1994. They were married in the Philippines in April 1994 and their daughter was born in the United States in January 1995. [REDACTED] adjusted status to LPR in 2004 as a skilled worker. According to [REDACTED] statement, she and the applicant were living and working in Saudi Arabia in the early 1990’s, she as a nurse, and he as a tailor, and decided in 1994 to visit the United States before returning home to the Philippines; she obtained a tourist visa from the U.S. Embassy in Riyadh and arrived in the United States without her husband, who remained in Saudi Arabia until after his employment contract ended in April 1995; he then returned to the Philippines and was not able to join [REDACTED] and their child in the United States until 1997. The AAO notes that [REDACTED] states on Form G525A, *supra*, that he lived in Manila until November 1997, and does not indicate that he resided in Saudi Arabia. The most recent tax information in the record, for 2002, indicates that the applicant earned \$32,571 as a tailor and his wife earned \$38,792 as a nurse.

The record shows that the couple lived and worked in the Philippines as adults, they were educated in the Philippines and they married in the Philippines. There is no evidence that either [REDACTED] or the applicant has any family members in the United States or that they lack family support in the Philippines; the applicant indicated that his parents both live in the Philippines. There is no evidence in the record to indicate that Ms. [REDACTED] and her husband would not be able to support themselves in the Philippines as they are both skilled, she as a nurse and he as a tailor. [REDACTED] has stated that she is depressed and worried about her husband having to return to the Philippines, indicating that she would join him but would lose her job, and her daughter would be raised in the Philippines. Such a move would be difficult, especially for their daughter, and [REDACTED]

current depression and worry over her situation are understandable. It appears that she faces the same decision that confronts others in her situation – the decision whether to remain in the United States or relocate to avoid separation. There is no evidence in the record, however, indicating that any hardship [REDACTED] would experience would be extreme in either case; she is able to support herself in the United States, as she did from 1994 to 1997 without the presence of her husband; and the evidence indicates that she and her husband have skills that would allow them to work in the Philippines and raise their child there; her husband has family in the Philippines, and they both moved to the United States as adults, she at the age of 35 and he at the age of 29.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if her husband is refused admission. 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 individuals who are deported. The BIA has generally not found financial hardship alone to amount to extreme hardship. *Matter of Cervantes-Gonzalez, supra*, at 568 (citations omitted).

The record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of removal to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his 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 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 rests 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.