



U.S. Citizenship
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FILE:



Office: MIAMI (JACKSONVILLE, FL)

Date: **MAY 30 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:



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 waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a photo-switched passport containing a nonimmigrant visa in someone else's name. The record indicates that the applicant's spouse is a lawful permanent resident and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 lawful permanent resident husband.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated May 23, 2002.

On appeal, the applicant, through counsel, asserts the "District Director failed to adequately consider all relevant factors in determining hardship to the qualifying relative." *Form I-290B*, filed June 14, 2002.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant's husband and parents, and the applicant's affidavit. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

Section 212(i) of the Act provides, in pertinent part, that:

- (i) **(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 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 [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...

In the present application, the record indicates that in November 1992, the applicant entered the United States at Los Angeles, California, by presenting a photo-switched Philippine passport containing a nonimmigrant visitor visa in someone else's name. On December 29, 1995, the applicant married Mr. [REDACTED] a lawful permanent resident. On or about January 11, 1996, the applicant filed a Form I-130, which was approved on March 13, 1996. On or about September 27, 2000, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On April 11, 2002, the applicant filed a Form I-601. On May 23, 2002, the District Director denied applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her lawful permanent resident spouse.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's lawful permanent resident spouse would face extreme hardship if the applicant were removed to the Philippines. The applicant's spouse states they have lived together since they married in 1995. *Declaration of [REDACTED]* dated March 19, 2002. The applicant's spouse states it would cost him "financially and mentally to be separated from [the applicant]." *Id.* The AAO notes that there are no professional evaluations for the AAO to review to determine how a separation from the applicant would affect her husband mentally, emotionally, and/or psychologically. The applicant states she does not "even know what's [sic] life are [sic] waiting for [her] in the Philippines and [her] husband is here in the U.S., working hard and living alone." *Affidavit of [REDACTED]*, dated March 18, 2002. The AAO notes that the applicant came to the United States when she was 24 years old; therefore, she spent all her formative years in the Philippines, and it has not been established that she has no family in the Philippines. Counsel states the applicant's husband's parents are elderly, and the applicant's husband helps them

financially. *Brief in Support of Appeal*, page 6, filed June 24, 2002. In addition, the applicant helps take care of them. *Id.* However, the AAO notes that the applicant's husband states his brothers and sister reside in the United States and it has not been established that they could not help provide financial support to their parents. Additionally, the applicant's husband's parent's state they still work. *Affidavit of* and dated March 18, 2002. Counsel states the applicant "expressed remorse for her misrepresentation." *Brief in Support of Appeal, supra* at page 5. The AAO notes that in her affidavit, the applicant did not express any remorse for her misrepresentation; however, the applicant's husband apologized for the applicant's misrepresentation. Counsel cites the poor economic conditions and general instability in the Philippines as further reasons that the applicant and her husband cannot return there. *Id.* The AAO finds that the applicant has failed to establish extreme hardship to her lawful permanent resident spouse if he accompanies her to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's lawful permanent resident spouse if he remains in the United States. The applicant's husband is employed in the United States and it has not been established he would suffer any economic loss if the applicant were removed to the Philippines. As a lawful permanent resident, 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. Additionally, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to her spouse's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has 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*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her spouse if he remains in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's lawful permanent resident husband will endure hardship as a result of his wife not being able to enter the United States. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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(a)(6)(C)(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.