

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



H2

FILE:



Office: LOS ANGELES

Date:

NOV 19 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), 8 U.S.C. section 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 inadmissible to the United States 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 to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative Petition (Form I-130) filed by his U.S. citizen spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her.

The record reflects that the applicant used fraudulent documents to gain admission to the United States as a tourist in 1992. The applicant and his wife, [REDACTED] were married in the United States on July 3, 1996. They have a daughter born in the United States on February 19, 1998. The applicant's spouse is a native of the Philippines who became a naturalized U.S. citizen on January 25, 1999. The applicant's spouse filed the Form I-130 on the applicant's behalf on June 4, 1999. The petition was approved on March 13, 2002. The applicant also filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on June 4, 1999 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 3, 2001.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated October 15, 2004.

In a brief submitted on appeal, counsel contends that the district director abused her discretion in failing to consider and give proper weight to the evidence presented by the applicant. Counsel asserts that the decision misapplies legal precedent, is written in "boilerplate language" and cites the wrong section of law for the waiver applicable in this case. Counsel summarizes the hardship factors present in this case and contends that these factors, when viewed together, are sufficient to establish extreme hardship.

In support of the waiver application, the applicant has submitted an affidavit from the applicant's spouse; a psychological evaluation of the applicant's spouse from [REDACTED] a licensed clinical social worker; a letter from the applicant's spouse's employer; a letter from the applicant's spouse's physician, [REDACTED] and a travel warning for the Philippines issued by the U.S. Department of State in 2004. The record also contains tax, employment and financial records for the applicant and his spouse. The entire record was considered in rendering a decision on the appeal.

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.

The record reflects that the applicant was admitted to the United States in nonimmigrant B-2 status on November 3, 1992. On his Form I-485, the applicant indicated that he used fraudulent documentation to procure admission to the United States. The applicant has not disputed that he is inadmissible under section 212(a)(6)(C) of the Act.

A waiver of inadmissibility under section 212(i) of the Act 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 and his child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. 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. *See 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 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).

The Ninth Circuit Court of Appeals 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. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her affidavit, the applicant’s spouse states that if she does not return to the Philippines with the applicant, she will suffer depression from being separated from her husband and be forced to raise her daughter alone. The applicant’s spouse indicates that if she returns to the Philippines with the applicant she will suffer emotionally from being separated from her parents and from being unable to provide her daughter with the same educational opportunities in the Philippines as she would receive in the United States. The applicant’s spouse asserts that she will lose her job as a cafeteria worker in an elementary school and will have no “business or employment opportunities” in the Philippines, where she claims she has no family to assist or support her. The applicant’s spouse also contends that if she leaves the United States, she will be compelled to relinquish the “community ties” she has established in almost a decade of living here.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse will suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any psychological consequences experienced by his spouse would constitute extreme hardship when considered with other hardship factors. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter of [REDACTED] is based on a single interview with the applicant’s spouse. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or any history of treatment for the current or past disorders suffered by the applicant’s spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. The letter from [REDACTED] indicates that the applicant’s spouse is suffering from several medical conditions, but does not contain sufficient information from which it may be inferred that these medical conditions have been caused or exacerbated by anxiety related to potential separation from the applicant or are likely to be aggravated thereby. The hardship described by the applicant’s spouse, while a significant factor, is nonetheless typical of individuals separated as a result of removal or inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The AAO recognizes that, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

However, the evidence shows that the applicant's spouse is employed in the United States and there is insufficient evidence showing that the departure of the applicant would result in financial hardship to her. Likewise, the applicant's spouse has submitted no evidence beyond mere assertions showing that she and the applicant will be unable to obtain employment in the Philippines or that they have no family or other ties there. Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes 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)). The AAO recognizes that the applicant's spouse will experience some emotional loss if she leaves the United States after a decade of living here, but there is insufficient evidence showing that the hardship she will experience if she chooses to relocate to the Philippines would go beyond the common results of removal or inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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.