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Office: LOS ANGELES, CA

Date:

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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.

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 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 February 5, 1997. The applicant is married to a lawful permanent resident and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record did not 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 April 18, 2005.

On appeal, counsel asserts that the applicant's spouse will suffer emotional, physical and financial hardship as a result of the applicant's inadmissibility. *Counsel's Brief*, dated May 9, 2005.

The AAO notes that counsel cites the Legal Immigrant Family Equity Act, Child Status Protection Act, "V" visa and "K" visa as family unity programs encouraged by Citizenship and Immigration Services (CIS) and asserts that CIS should adopt these programs for the applicant's family. *Id.* The AAO notes that the programs cited by counsel do not apply to the applicant and his family. The AAO does not have the authority to apply programs to applicants who do not otherwise qualify.

The record indicates that on February 5, 1997, the applicant presented a Filipino passport with the name, [REDACTED] date of birth January 12, 1966, to gain 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 experiences or his children

experience 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 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). 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 she resides in the Philippines or in the event that she resides 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. The AAO will consider the relevant factors in adjudication of this case.

Counsel states that the applicant and his spouse have been married since 1996 and have two children. *Counsel's Brief*, May 9, 2005. He states that the applicant's spouse is currently on medical leave from her employer because of complications with her third pregnancy. He explains that the applicant's spouse will suffer emotional and financial hardship as a result of the applicant's inadmissibility. Counsel asserts that the applicant's spouse has not been able to sleep well and that she is worried and fearful about having to raise their two children and a newborn without a father or to have her children raised in the Philippines without their mother. He further states that the applicant's spouse will suffer financially because the family will no longer have two incomes to support the family. *Id.*

The applicant submits documentation regarding his spouse's medical condition. One of the documents is a Referral Authorization Request, dated April 14, 2005, which states that "total obstetrical care" was requested for the applicant's spouse's by [REDACTED] and approved. The applicant also submits a documentation showing that his spouse was under medical care and disabled from April 13, 2005 through May 13, 2005. *Letters from* [REDACTED] dated April 13, 2005 and April 27, 2005. While the AAO notes that the applicant's spouse is experiencing problems with her pregnancy, the applicant has provided no

evidence to demonstrate that her medical condition requires his presence or that she could not receive adequate medical care in the Philippines. Accordingly, the record does not establish that the medical problems of the applicant's spouse would constitute an extreme hardship were the applicant to be removed from the United States.

The record of financial documents submitted by the applicant shows that the applicant's spouse is employed as a billing clerk with Malibu Dream Girl, Inc. and earned \$51,988.54 in 2004. *Form W-2 Wage and Tax Statement 2004*. The financial documentation submitted does not support a finding that the applicant's spouse would not be able to support her family on this salary. In regards to relocating to the Philippines, the applicant's spouse states that she has been working for Malibu Dream Girl, Inc. for the past ten years and that she has retirement benefits, a 401K, medical and dental benefits with the company. *Spouse's Statement*, dated May 9, 2005. She explains that she will not have these benefits if she moves back to the Philippines. The applicant's spouse also states that she and the applicant have purchased a home in the United States and that it will be very hard for her to find employment in the Philippines if she were to relocate. She states that she and the applicant do not own property in the Philippines, they have no relatives that can help them financially and their medical costs will become a grave problem. *Id.* The AAO notes that no documentation regarding employment and access to health care in the Philippines was submitted. 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)). Thus, the current record does not establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

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 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 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.