



U.S. Citizenship
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FILE:



Office: LOS ANGELES, CALIFORNIA

Date: OCT 26 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and 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 passport in someone else's name. The record reflects that the applicant is the spouse of a United States citizen. 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 United States citizen spouse and United States citizen daughters.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated November 10, 2005.

On appeal, the applicant, through counsel, contends that the "...U.S. citizen spouse of applicant would suffer extreme hardship if the applicant-spouse was sent back to the Philippines." *Form I-290B*, filed December 13, 2004.

The record includes, but is not limited to, a letter from counsel, statements from the applicant's husband, a letter from Physician Assistant [REDACTED] regarding the applicant's husband's mental health, and an evaluation from [REDACTED] regarding the applicant's husband's mental health, and a court disposition from the applicant's January 28, 1999 conviction. 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 on April 22, 1992, the applicant entered the United States by presenting a fraudulent passport in the name of [REDACTED]. On June 19, 1998, the applicant's [REDACTED] was born in California. On October 9, 2000, the applicant married [REDACTED] a United States citizen, in Nevada. On November 10, 2001, the applicant's [REDACTED] was born in California. On April 2, 2002, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On April 7, 2003, the applicant filed a Form I-601. On November 10, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

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 United States citizen 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 husband would face extreme hardship if the applicant were removed to the Philippines. Counsel states the applicant's husband "suffers from clinical anxiety, excessive worry and sleeplessness...The thought of losing his wife has exacerbated [the applicant's husband's] condition." *Letter from counsel*, dated December 6, 2005. The applicant's husband states that "[t]he thought of losing [the applicant] has literally made [him] ill...[He is] an intensive care registered nurse who is unable to focus or provide the proper care due to this situation. [He is] presently under the care of a physician for the excessive stress this has caused." [REDACTED] The AAO finds that the applicant's husband is suffering from anxiety. [REDACTED] states the applicant's husband "is currently experiencing severe anxiety episodes. He has a history of anxiety, but it was controlled since he was married to [the applicant] and the birth of his two daughters. This condition has restarted in recent weeks, since the immigration issue." [REDACTED] dated November 30, 2005. [REDACTED] states "an extreme psychological hardship would befall [the applicant's husband] were he to be left to deal single-handedly with the grief reaction his young daughters would

experience were their mother deported.” [REDACTED] dated December 5, 2005. The AAO notes that [REDACTED] did not state that the applicant’s husband could not receive treatment in the Philippines and no documentation was submitted establishing that he cannot receive treatment for his psychological condition in the Philippines.

The AAO finds that, based on his history of psychological problems, the applicant has demonstrated extreme hardship to her husband if he remains in the United States without the applicant; however, it has not been established that the applicant’s husband could not join her in the Philippines. The only evidence provided by the applicant regarding her husband joining her in the Philippines is a statement he made to [REDACTED]. The applicant’s husband “explained...[that] he cannot envision relocating to the Philippines to preserve his marriage, and his family unit...Additionally...[the applicant’s husband] would be faced with his own personal ‘culture shock’.” *Evaluation from* [REDACTED]. The applicant failed to demonstrate whether or not she has any other family ties in the Philippines. Since the applicant’s husband’s anxiety is primarily caused by the separation from the applicant, if the applicant’s husband joins the applicant in the Philippines then the anxiety would presumably no longer be an issue. The applicant’s husband failed to provide any evidence that he could not obtain a job in the Philippines or evidence that he could not receive medical treatment in the Philippines for his anxiety. Additionally, the record fails to demonstrate that the applicant could not obtain a job in the Philippines or that she has no transferable skills that would aid her in obtaining a job in the Philippines. 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 husband if he accompanies her to the Philippines.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s husband will endure hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he were to relocate to the Philippines.

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.