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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: OCT 31 2007

IN RE:

Applicant:

[Redacted]

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:

[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 application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

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). The applicant seeks a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The director determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied accordingly.

On appeal the applicant asserts, through counsel, that the director did not properly analyze the hardship in her case, and she asserts that the evidence contained in the record establishes that her husband will suffer extreme emotional, financial and physical hardship if she is denied admission into the United States. Through counsel, the application asserts that her husband is a U.S. lawful permanent resident, and that she has been married to her husband since 1991. The applicant indicates that she and her husband have four daughters born in the United States, and she indicates that her husband would miss her emotional, spiritual and motherly support if they were separated. The applicant indicates that her husband works two jobs in order to support their family, and she states that her husband would suffer financial hardship if he had to pay someone to provide full-time care to their children in the United States. The applicant indicates that her husband would also suffer extreme hardship if he moved with his family to the Philippines, because the Philippines is an unsafe place to live and has high unemployment and low wages, and because their four daughters, ages 11, 7, 3 and 2, would not have the same educational opportunities as in the United States.

Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) provides in pertinent part that:

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

The record reflects that the applicant presented a fraudulent passport to U.S. officials upon her entry into the United States. The applicant is thus inadmissible under section 212(a)(6)(A)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 applicant's husband became a U.S. lawful permanent resident on November 30, 2005. He is thus a qualifying relative for section 212(i) of the Act purposes.¹ U.S. citizen or lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S. citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's husband.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors deemed relevant in determining whether an alien has established extreme hardship. 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The record contains the following evidence relating to the applicant's husband's [REDACTED] extreme hardship claim:

An affidavit signed by [REDACTED] on March 16, 2006, stating in pertinent part that the prospect of his wife's departure to the Philippines makes him sad and nervous. [REDACTED] indicates that he and the applicant married in the Philippines in June 1991, and that they have been married over 15 years. He indicates further that he and the applicant have four daughters born in the United States, and that the applicant is a full-time mother and provides emotional and spiritual support to the family. [REDACTED] indicates that he works two jobs in order to provide financially for his family, and to provide a private education to his two eldest daughters. He indicates that he would not be able to afford to pay someone to care for his children if his wife were not allowed to remain with him in the United States. [REDACTED] additionally indicates that his widowed mother, as well as his two sisters have legal status in the U.S., and that they live near him in the Los Angeles, California area. [REDACTED] states that he has no family in the Philippines, and he states that he does not want to be separated from his mother and sisters in the United States. [REDACTED] indicates further that he and his children would not relocate to the Philippines if the applicant were denied admission into the United States because he suffers from bad health and would be unable to obtain affordable medical care in the Philippines. He indicates further that the Philippines has high unemployment and age discrimination, and he indicates that the quality of education is poor,

¹ The record indicates that the applicant was a dependent on her husband's employment-based, lawful permanent resident application at the time she was found to be inadmissible to the United States. The applicant's husband was found to be admissible and his status was adjusted to that of a lawful permanent resident.

and that terrorist and criminal activity make the Philippines an unsafe place for his family to live.

Medical documentation reflecting in pertinent part that on January 22, 2006, [REDACTED] was placed on medication for sudden chest pain and post myocardial infraction, and that he required the placement of two stents in his left artery. The medical documentation indicates that after treatment, [REDACTED] was pain free. The January 22, 2006 medical recommendations for [REDACTED] include continuing his medical regimen, discontinuation of tobacco use, proper diet, and outpatient follow-up in 3-4 weeks. The record does not contain follow-up medical information.

2004, Federal Income tax and pay stub evidence indicating that [REDACTED] worked as a CPA for two employers, and that he earned over \$76,000.

Copies of home and credit card bills, and school tuition information for one of [REDACTED] daughters.

California birth certificates reflecting that the applicant and [REDACTED] have four daughters, ages 11, 7, 3 and 2.

Letters discussing the applicant's good character.

A copy of the 2004, Department of State Country Reports on Human Rights Practices for the Philippines.

The AAO has reviewed the evidence in its totality. Upon review of the evidence, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if the applicant is denied admission into the United States, and he remains in the United States. The medical evidence submitted on appeal fails to demonstrate that the applicant's husband presently suffers from a serious medical condition, or that his medical condition was, or would be, affected by the applicant's failure to be admitted into the United States. The affidavit evidence in the record additionally fails to establish that the applicant's husband would suffer emotional hardship beyond that commonly associated with removal if the applicant were denied admission into the United States. The evidence also fails to demonstrate that the applicant's husband would be unable to support his family, or that he would suffer extreme financial hardship if the applicant were denied admission into the United States. Moreover, the AAO notes 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 finds that the evidence in the record also fails to establish that the applicant's husband would suffer extreme physical, emotional or financial hardship if he moved with his family to the Philippines. The U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, does not rise to the level of extreme hardship. The present record reflects, moreover, that the applicant's husband is familiar with the language, culture and environment in the Philippines, as he is originally from the Philippines, he met and married the applicant in the Philippines, and he only recently became a U.S. lawful permanent resident. In addition, the Board held in *Matter of Pilch*,

21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation. The AAO notes further that the country conditions evidence submitted by the applicant is general in nature, and fails to address or demonstrate that the applicant's husband would be unable to obtain medical care in the Philippines, or that he and his family would face a risk of harm in the Philippines.

A section 212(i) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband would suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.