

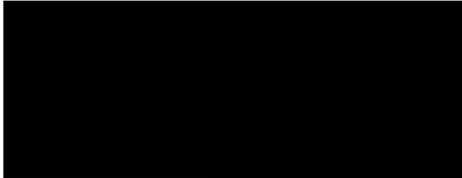
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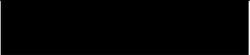
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MANILA, PHILIPPINES

Date: **SEP 21 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 Officer in Charge, Manila, The Philippines and the matter 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 attempted to procure a visa to the United States by fraud or willful misrepresentation and under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(E) for having knowingly assisted another alien in trying to enter the United States in violation of U.S. immigration law. The applicant is married to a lawful permanent resident. She seeks a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i), and 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11) to live in the United States with her husband.

The officer in charge concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant's waiver request were denied. He denied the application accordingly. *Decision of the Officer in Charge*, dated February 24, 2006.

On appeal, counsel asserts that the officer in charge erred in concluding that the applicant's daughter had not undertaken significant obligations with regard to her parents and that the applicant did not have extensive family ties to the United States. *Form I-290B*, dated March 23, 2006. In support of the appeal, counsel submits a brief, evidence of the financial support the applicant's daughter has provided to her parents and her travel to The Philippines, a prescription record for the applicant's spouse, [REDACTED] a statement from the applicant's daughter, letters of support from [REDACTED] supervisors at his place of employment and a list of the applicant's family members in the United States. The entire record was reviewed prior to reaching a decision in this matter.

The record indicates that the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by her U.S. citizen daughter. On January 31, 2005, a U.S. Department of State consular officer found the applicant to be ineligible for an immigrant visa under sections 212(a)(6)(C) and 6(E) of the Act, based on the applicant's 1991 misrepresentation in connection with a prior visa application. Specifically, the applicant submitted an altered birth certificate for her son so that he would be able to benefit from a previously approved Form I-130 filed by the applicant's U.S. citizen sister. In her statement, the applicant indicates that she submitted the altered birth certificate on the advice of her travel agency and because her son, in 1991, was unmarried and was not mature enough to live on his own if she and her husband immigrated to the United States.

Based on the record before it, the AAO finds the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a visa through fraud or willful misrepresentation and section 212(a)(6)(E), 8 U.S.C. § 1182(a)(6)(E) for having knowingly assisted another person in attempting to enter the United States in violation of U.S. immigration law.

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 states that:

- (1) The Attorney General [now the Secretary of Homeland Security] 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(a)(6)(E) precludes the admission of:

- (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law

However, section 212(d)(11) indicates that:

The Attorney General [now Secretary of Homeland Security] may, in his discretion for humanitarian purposes, to assure family unity or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) of this section in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant . . . if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The AAO turns first to a consideration of the applicant's eligibility for a waiver under section 212(i) of the Act since it is the more restrictive of the two sections of law under which she is applying for a waiver. If the applicant is unable to meet the burden of proof under section 212(i), the AAO will not consider her eligibility for a waiver under section 212(d)(11) as no purpose would be served in discussing whether she merits a waiver for humanitarian purposes, to assure family unity or in the public interest.

Section 212(i) 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 a qualifying family member. In the present case, the only qualifying relative is [REDACTED] the applicant's spouse. Hardships the applicant or the applicant's daughter may experience as a result of separation will, therefore, not be considered in these proceedings, except as they affect [REDACTED]. 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 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

alien 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. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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).

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. “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

As [REDACTED] is not required to reside outside the United States based on the denial of the applicant’s waiver request, the applicant must establish that he would suffer extreme hardship whether he resides in The Philippines or remains in the United States. The AAO now turns to a consideration of the relevant factors in this case.

The record includes the following evidence that relates to the hardship that [REDACTED] would suffer if the applicant’s waiver request were to be denied: counsel’s briefs, dated December 5, 2005 and April 20, 2006; statements from the applicant’s daughter, dated June 8, 2005 and April 18, 2006; a July 13, 2005 statement from the applicant; a June 8, 2005 statement from [REDACTED] letters from [REDACTED] supervisors; medical information related to [REDACTED] earning statements for [REDACTED] documentation of Mr. [REDACTED] social security income from the Philippine government; copies of checks written by [REDACTED] to the applicant and others; documentation of the applicant’s expenses in The Philippines; copies of payments on a real estate loan in [REDACTED] name and copies of prepaid international calling cards. The AAO notes that the record also contains copies of checks signed by the applicant’s daughter during the period 1990-2005

as proof of her support of her parents and copies of her U.S. and Philippine passports showing her travel to The Philippines. However, as previously noted, the impact of the applicant's inadmissibility upon her daughter is not a permissible consideration in these proceedings and the record does not establish a connection between this evidence and the hardships experienced by [REDACTED]

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to The Philippines. In her April 18, 2006 statement, the applicant's daughter states that because of the political atmosphere and economic conditions in The Philippines, her father's age and his lack of education, it would be difficult for him to find "higher-paying employment" if he relocated. She also reports that the family business that previously employed [REDACTED] has been closed for two years.

In the December 5, 2005 brief submitted at the time of filing, counsel contends that [REDACTED] cultural beliefs will not allow him to return to The Philippines. Counsel maintains that in Philippine culture, it is the responsibility of the applicant's unmarried daughter to care for her parents through retirement and old age. He reports that this is the reason that [REDACTED] immigrated to the United States and the reason why he wishes to remain. Culturally, counsel contends, [REDACTED] does not consider leaving his present arrangement to be an option. Counsel further notes that the applicant also believes that she should be cared for by her U.S. citizen daughter and that this is the reason she is seeking entry to the United States.

While the AAO notes the statements made by the applicant's daughter regarding political and economic conditions in The Philippines, it finds no documentary evidence that would support her claim regarding their negative effect on [REDACTED]'s ability to obtain employment. Neither does the record offer documentation to establish that it would be difficult for [REDACTED] to find employment in The Philippines because he lacks a particular level of education or that the business that previously employed him has closed. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. See *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)). Moreover, experiencing economic detriment upon relocation to another country is not unusual or extreme and the record does not establish that [REDACTED] would be unable to obtain any employment in The Philippines. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986).

The record also fails to offer any country conditions information that would support counsel's statements regarding the Philippine cultural beliefs that, he indicates, preclude [REDACTED] from joining the applicant in The Philippines. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, counsel does not indicate that, were Mr. [REDACTED] violate his cultural beliefs to return to The Philippines to live with the applicant, he would suffer extreme hardship. Accordingly, the record does not demonstrate that [REDACTED] would suffer extreme hardship if he relocated to The Philippines.

The second part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he remains in the United States. In her statement, the applicant asserts that her

separation from [REDACTED] has been terribly difficult in that they have been married since 1956 and have come to depend upon one another in many ways. She notes that while she and [REDACTED] have the means to support themselves if they live in one residence, supporting two residences is an incredible hardship. As a result of their separation, the applicant contends that [REDACTED] who was retired prior to coming to the United States, has been forced to find work in order to earn the extra money needed to support her in The Philippines. She also contends that [REDACTED] health has suffered as a result of their separation because he is unable to sleep and is depressed, losing weight as a result.

[REDACTED] statement echoes that of the applicant, maintaining that, as a result of their long marriage, he and the applicant have become physically, psychologically, emotionally and financially dependent on one another. He notes that the applicant became depressed when he emigrated from The Philippines and that as a result of their extended separation, she always seems to be sick. [REDACTED] states that he worries about the applicant's health and that, as a result, he has trouble sleeping, is losing weight, and feels sad and lonely most of the time. Two letters from [REDACTED] supervisors at his place of work, Classic Residence by Hyatt, report that his normal "upbeat" and "positive" personality has changed as a result of his prolonged separation from the applicant and that he is now quiet and sad, and is unable to sleep and has lost weight.

The applicant's daughter reports that [REDACTED] has been devastated by the separation from her mother. In her initial June 8, 2005 statement, she indicates that as a result of the separation, her father is having difficulty sleeping at night, is losing weight, and is sad and lonely. In her second statement, dated April 18, 2006, the applicant's daughter indicates that [REDACTED] is continually seeking medical assistance, including taking prescription sleeping pills and anti-depressants. The applicant's daughter contends that this emotional hardship and physical deterioration will continue if he is not able to reunite with the applicant. She specifically notes the psychological distress created by her father's concerns about her mother's health.

With regard to the financial hardships being experienced by [REDACTED] the applicant's daughter asserts that, after watching her struggle with her financial responsibilities, he has assumed responsibility for supporting her mother in The Philippines. She states that she does not expect [REDACTED] to help her with her financial obligations, including the payment of her mortgage and the maintenance of her home, but that the burden of sending \$1,300 each month to The Philippines to cover the applicant's living expenses, including mortgage, utilities, maintenance, food, transportation allowances, and the expenses related to her deteriorating physical and emotional condition have created financial difficulties for him. She also notes the additional expenses that are associated with her mother's immigration case.

In the December 5, 2005 brief submitted at the time of filing, counsel asserts that the separation of a couple married as long as the applicant and [REDACTED] causes extreme emotional and psychological hardship, and that both the applicant and [REDACTED] are suffering physical manifestations of their emotional states. Counsel indicates that [REDACTED] is having difficulty sleeping, is losing weight and feels sad and lonely, and that the applicant repeatedly gets sick because she is too depressed to care for herself properly. Counsel also contends that the separation of the applicant and [REDACTED] requires him to assist in maintaining two residences and that this financial hardship compounds the emotional stress created by [REDACTED] separation from the applicant and the lack of family unity generally. Counsel maintains that to expect Mr. [REDACTED] support two households at 66 years of age is an unreasonable demand and would result in extreme financial hardship.

Although the AAO acknowledges the emotional distress felt by [REDACTED] as a result of his separation from the applicant, it does not find the evidence of record to demonstrate that he would suffer extreme emotional hardship if the applicant's waiver request were to be denied. The record documents that on October 3, 2005, [REDACTED] filled a prescription for [REDACTED] which are prescribed for anxiety and depression, and insomnia respectively. On March 22, 2006, he filled a prescription for Paxil, an antidepressant, and Zolpidem, a medication for insomnia. However, this record of [REDACTED] prescriptions is not accompanied by an evaluation of his emotional or physical state by a licensed medical professional that would establish his need for these medications or that his insomnia and depression are the result of his separation from the applicant. The record also fails to demonstrate that the applicant's health is a cause of concern for [REDACTED]. While it includes documentation of medical tests administered to the applicant and her purchase of herbal remedies, it does not indicate that she has any medical condition that would cause [REDACTED] to be concerned about her health. As a result, the record lacks the documentary evidence necessary to distinguish [REDACTED] emotional distress as a result of his separation from the applicant from that routinely experienced by other individuals who have been separated from their spouses as a result of removal or a determination of inadmissibility.

The record also fails to establish that [REDACTED] would suffer extreme financial hardship as a result of being separated from the applicant. Inconsistent accounts of [REDACTED] financial obligations preclude any conclusion regarding the economic impact of his separation from the applicant.

Although counsel states that [REDACTED] and his daughter spend \$1,300 each month supporting the applicant in The Philippines and \$4,000 to maintain their "households" in the United States, the applicant's daughter has indicated that she and [REDACTED] live in the same household and that he does not assist her in paying her mortgage or in maintaining her home. Although the applicant's daughter asserts that [REDACTED] has assumed responsibility for supporting her mother in The Philippines, the record indicates that she continues to support her mother financially. Counsel's April 18, 2006 brief states that the applicant's daughter has continued to contribute to her mother's financial support following [REDACTED] 2004 arrival in the United States and the record contains copies of regular support checks written by the applicant's daughter in 2005. While the record also contains copies of checks from the period August 29, 2005 through October 18, 2005 that [REDACTED] has written to his daughter and others, the applicant has failed to indicate the purpose for these payments or whether they constitute recurring expenses for [REDACTED]. Accordingly, the record fails to provide a clear or consistent explanation of [REDACTED] financial obligations in The Philippines or in the United States and does not, therefore, demonstrate that he would suffer extreme financial hardship if the applicant's waiver request were denied.

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that [REDACTED] would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that he is experiencing the distress and difficulties that routinely arise when a spouse is found to be inadmissible to the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a

waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

As the applicant is statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether she merits a waiver as a matter of discretion. Neither, as previously discussed, is any purpose served in considering whether the applicant is eligible for a waiver of inadmissibility under section 212(d)(11) of the Act. Accordingly, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.