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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

Office: CHICAGO, ILLINOIS

Date: **APR 03 2008**

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 waiver application was denied by the District Director, Chicago, Illinois, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated September 25, 2005. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

In a signed statement dated October 16, 2003, the applicant admitted to entering the United States in 1998 using a passport, for which she paid 250,000, in the name [REDACTED]

The AAO finds that the applicant's admission supports the finding of inadmissibility: the applicant used fraudulent documents to willfully misrepresent a material fact, her true identity, so as to gain admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 to the applicant and her children are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized 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).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s husband must be established in the event that he remains in the United States; and in the alternative, that he joins the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record contains letters, income tax records, W-2 Forms, wage statements, employment letters, birth certificates, a marriage certificate, photographs, a health insurance card, documents from OSF Medical Group regarding the applicant’s mother-in-law, the U.S. Department of State country report on the Philippines for 2004, information about the United States and the Philippines by the World Health Organization, a BBC news article, a sales tax transaction record pertaining to a vehicle, the Record of Payment and Settlement Statement for the applicant’s house, and other documents.

The birth certificate reflects that the applicant’s son was born on February 21, 2002 in the United States.

On appeal, counsel states that the district director erred in denying the waiver application. She states that the district director’s analysis of *Matter of Cervantes-Gonzalez* is flawed because the case does not hold that marriage to an undocumented immigrant negates extreme hardship to the U.S. citizen or lawful permanent resident spouse because he or she had notice of the illegal status. Counsel states that the facts in the instant case differ from those in *Matter of Cervantes-Gonzalez*. She states that the applicant and her husband have one child and expect another; that they are homeowners; that the applicant’s mother-in-law, who lives with them, depends on the applicant; that most of the applicant’s husband’s family live in the United States; and that the couple is employed in the United States, and have a car, credit cards, and medical insurance. She states that the three siblings of the applicant’s husband who live in the Philippines would not be able to help the applicant and her husband. Counsel states that the Philippines is a poor country, where two-fourths (40

million) of the population live in poverty. She states that the applicant's husband, who does not have a high school or college education, would earn \$5.36 (U.S. Dollars) a day. She conveys that the applicant's husband would not be able to pay monthly household expenses in the United States without his wife's income. She states that the Philippine government does not fund medical care. Counsel states that the applicant's husband lived in abject poverty as a boy and would return to such poverty if he were to live in the Philippines.

The letter by the applicant's husband describes his impoverished childhood, his lack of education, and his close relationship with his family and wife. He conveys that his wife is a companion, an interpreter, and a driver for his mother. He states that his son is to start school and that he expects another child in 2005. He states that he relies on his wife to care for the children and his mother. He states that they would have no place to live in the Philippines and that finding a job to support his family there would be difficult, especially because he did not finish high school. He states that he would have to find a job in agriculture, which does not pay enough to support a family.

The letter by the applicant's mother-in-law conveys that while living in the Philippines she and her family were poor. She conveys that her daughter-in-law helps her, and if she returns to the Philippines, her other adult children would not be able to assist her. She states that she is concerned that her son and his family would live in poverty if they moved to the Philippines.

The documents from OSF Medical Group reflect that the applicant's mother-in-law has a valvular heart problem, high blood pressure, high cholesterol, and osteoporosis for which she takes various medications.

The letters by the siblings of the applicant's husband convey that the applicant must be present in the United States to help their brother with the children and to help their mother. They state that finding a job in the Philippines is very difficult.

The letter by the applicant states that she was poor while living in the Philippines and that returning to the Philippines will mean returning to poverty. She states that her siblings and mother who are in the Philippines would not be able to help them.

The wage statement for the pay period ending September 24, 2005 for the applicant's husband reflects net pay of \$564.71. For the same pay period, the applicant's earnings are shown as \$636.23.

The W-2 Form for the applicant's spouse for 2004 shows earnings of \$18,778; for the applicant, \$17,576.

The record fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without her.

The applicant's husband claims that he would not be able to meet monthly household expenses, including childcare, without the applicant's earnings. The AAO finds that no comprehensive list of the family's household expenses has been provided to show that the applicant's earnings are required for meeting those monthly expenses. 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)).

With regard to family separation, courts in the United States have stated that “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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant’s husband is very concerned about separation from his wife. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s husband, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant’s husband, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

It is noted that although the record conveys that the applicant assists her mother-in-law, a mother-in-law is not a qualifying relative under section 212(i) of the Act.

The record is insufficient to establish that the applicant’s husband would endure extreme hardship if he joined the applicant in the Philippines.

The applicant’s husband is concerned about separation from his family in the United States. Courts in the United States have held that separation from one’s family need not constitute extreme hardship. In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families. And in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the finding of no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA found the petitioner “is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child.” It is noted that the record conveys that both the applicant and her husband have family members living in the Philippines.

To show extreme hardship in finding employment in the Philippines, the record contains the U.S. Department of State report, a news article, and the World Health Organization's country health indicators. However, general economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985).

Furthermore, U.S. court and BIA decisions have held that difficulties in obtaining employment in a foreign country are insufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one's trade or profession, although a relevant hardship factor, is not extreme hardship); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach extreme hardship); *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

The AAO observes that the Biographic Information shows the applicant as employed as a registered nurse at a hospital in the Philippines from October 1995 to March 1998. No evidence has been submitted to show that she would be unable to return to work and help to support her family.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.