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

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FILE:



Office: New York, New York

Date: **AUG 22 2008**

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), 8 U.S.C. section 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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York 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 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 to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (I-130) filed by his U.S. citizen spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The record reflects that the applicant, upon presenting a photo-substituted passport and visa bearing the name of [REDACTED], was admitted to the United States in B-2 visitor status on November 6, 1998. The applicant married his spouse, [REDACTED] a native of the Philippines and naturalized U.S. citizen, on December 14, 2004 in the United States. The applicant's spouse filed the Form I-130 petition on January 25, 2005. The petition was approved on March 3, 2006. The applicant also filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 25, 2005.

On March 3, 2006, the district director issued a decision denying the Form I-485 application on the basis that the applicant was not inspected and admitted or paroled into the United States and had not established that he was the beneficiary of a petition or an application for labor certification filed on or before April 30, 2001. On March 21, 2006, counsel filed a motion to reopen the Form I-485 application, noting that the applicant had been inspected and admitted into the United States, but with a passport and visa containing his photograph but a different name. On September 23, 2006, in response to the applicant's motion, the district director reopened the application, but denied it again for the same reasons stated in the March 3, 2006 decision. On August 1, 2007, the district director reopened the Form I-485 application on a Service motion and issued another decision denying the application, asserting that because the applicant was admitted as a result of a material misrepresentation, he had not made a lawful entry and could not be considered as having been inspected and admitted to the United States. Also on August 1, 2007, the district director issued a decision denying the applicant's waiver application on the ground that the applicant had failed to submit evidence to establish that extreme hardship would be imposed on a qualifying relative. *Decision of District Director Denying I-601 Application*, dated August 1, 2007. The applicant has appealed this decision to the AAO.

On September 28, 2007, the applicant was issued a Notice to Appear (Form I-862) in removal proceedings on January 18, 2008. The record reflects that the applicant is in removal proceedings as of the date of this decision.

On appeal, counsel contends that the applicant is not inadmissible because his misrepresentation was not "material" under section 212(a)(6)(C)(i) of the Act. *Brief in Support of Appeal*, dated September 18, 2007. Counsel cites various precedent decisions in support of the propositions that a misrepresentation is not material if an alien does not have the subjective intent to defraud or if an alien admitted under an alias would not have been inadmissible even if the applicant's true identity had been revealed. *Id.*; *See also Matter of G-G*, 7 I&N Dec. 161 (BIA 1956); *Matter of G*, 6 I&N Dec. 9 (BIA 1953); *Matter of D-L & A-M*, 20 I&N Dec.

409 (BIA 1991); *Matter of S- and B-C-*, 9 I&N Dec. 436 (AG 1960); *Matter of Box*, 10 I&N Dec. 87 (BIA 1962). Counsel asserts that the evidence submitted on appeal demonstrates that the applicant's U.S. citizen spouse would suffer extreme hardship if the waiver application is denied, and contends that the precedent decisions cited by the district director in the decision denying the waiver application are not relevant. *Id.*

The evidence submitted on appeal includes a psychological assessment of the applicant's spouse by [REDACTED], dated August 17, 2007; a letter from [REDACTED], the applicant's chiropractor; a newspaper article concerning the aftermath of flooding in the Philippines in August 2007; newspaper articles detailing the security situation in the Philippines and ongoing conflict between the government and insurgent and terrorist groups; and the U.S. State Department's Consular Information Sheet for the Philippines dated June 19, 2006. The record also contains an affidavit from the applicant's spouse dated January 3, 2006. The entire record was considered in rendering a decision on the appeal.

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.

The record reflects that the applicant presented a photo-substituted passport and visa bearing the name of [REDACTED] and was admitted to the United States in B-2 visitor status on November 6, 1998. Counsel has asserted that the applicant's misrepresentation was not material, and that the applicant is therefore not inadmissible under section 212(a)(6)(C) of the Act.

The elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. at 448-449. Based on this standard, the applicant's misrepresentation was material.

The record reflects that the applicant willfully misrepresented his identity to immigration officials in order to procure admission into the United States. In such an instance, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to him, and whether any United States government agencies possess information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented his identity, he shut off these material lines of inquiry. Specifically, the inspecting officer was unable to determine whether the applicant was the true owner of the passport and visa

presented, whether he possessed valid entry documents of his own, or whether the United States possessed information that had a bearing on the applicant's eligibility for admission.

Counsel implies that the applicant's misrepresentation was not material if he would have been eligible for a B-2 visa had he applied under his true identity. Yet, whether the applicant would have been issued a B-2 visa through legal means is not relevant to determining whether his misrepresentation was material under the present facts. The applicant made a willful misrepresentation in order to obtain admission to the United States, not to obtain a B-2 visa. Had he revealed his true identity to the inspecting officer, he would have been refused admission under section 212(a)(7) of the Act due to his lack of valid entry documents. Thus, the applicant misrepresented his identity to gain a benefit under the Act for which he was not eligible, and such misrepresentation was material. The applicant is therefore inadmissible under section 212(a)(6)(C) of the Act.

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 waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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).

U.S. courts have stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her affidavit dated January 3, 2006, the applicant’s spouse states that she cannot bear to be apart from the applicant and that they would both suffer “mental, physical and financial pain” if separated from each other for an extended period of time. She indicates that if the applicant has to return to the Philippines, she will be forced to “support two households” because the economic situation is not stable in the Philippines. She contends that she is unable to support two households because she is currently in school. She further asserts that she and the applicant wish to have children, and that she will be forced to raise these children alone or raise them in the Philippines if the waiver application is denied.

In his assessment dated August 17, 2007, [REDACTED] states that during his interview with the applicant’s spouse, she indicated that she is now employed full-time as a registered nurse. He states that she further indicated that she and the applicant live with her parents and siblings, and that she is “much closer to her family of origin than the average young married person.” [REDACTED] states that the applicant’s spouse confided that because of her close ties to her parents and siblings, and her job in the United States, it would be “impossible for her to live in the Philippines.” [REDACTED] asserts that the applicant’s spouse exhibits symptoms of “Adjustment Disorder with Mixed Anxiety and Depressed Mood,” and states that “in the event [the applicant] returns to the Philippines, [his spouse’s] depressive symptomatology will become clinically exacerbated and evolve into a Major Depressive Disorder.” [REDACTED] also indicates that the applicant’s spouse revealed to him that she had a seizure several years ago and was placed on medication, but he provides no further details.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter from [REDACTED] is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the adjustment disorder allegedly suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's spouse has indicated that she will suffer financial hardship in the applicant's absence, but has submitted no evidence to substantiate this claim. The record reflects that the applicant's spouse is employed and resides with her parents, and there is no evidence in the record of the applicant's present employment, if any, or the amount of financial support he provides the applicant. Neither is there evidence that the applicant would be unable to support himself or would require the financial support of the his spouse if he returned to Philippines. 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)). The AAO acknowledges the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's spouse, and as demonstrated by the other evidence in the record, is the common result of removal or inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has also failed to demonstrate that his spouse would experience extreme hardship if she relocated to the Philippines. The applicant's spouse is a native of the Philippines, and has not demonstrated that she lacks family and other ties there. The AAO acknowledges the indirect evidence, in the form of the hearsay account of [REDACTED], showing that the applicant would be separated from her immediate family and be forced to abandon her job if she chose to relocate to the Philippines. However, the newspaper articles and other evidence submitted on appeal do not demonstrate that applicant and the applicant's spouse will be unable to secure employment in the Philippines, or that the applicant's spouse will suffer hardship because of the general conditions there. Regardless, it is noted that the mere loss of current employment or the inability to maintain one's present standard of living or pursue a chosen profession does not constitute extreme hardship. *See Matter of Pilch*, 21 I. & N. Dec. 627, 631 (BIA 1996). The AAO concludes that the applicant's spouse will experience emotional hardship if she is separated from the members of her immediate family currently living in the United States, but concludes that this hardship is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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 rests 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.