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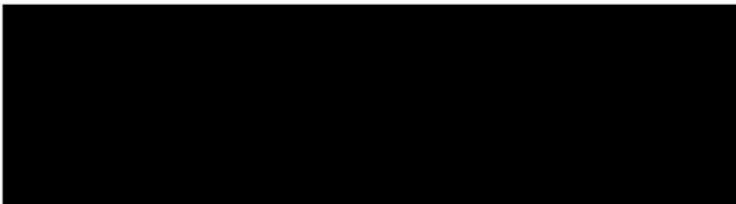


FILE: [REDACTED] Office: LOS ANGELES, CA Date: **JUL 10 2008**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

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 District Director, Los Angeles, California, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of the Philippines who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for committing a crime of moral turpitude. The applicant is married to [REDACTED], a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated February 27, 2006.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record reflects that the applicant plead nolo contendere to and was found guilty of embezzlement by employee (Cal. Penal Code § 501), and grand theft, property (Cal. Penal Code § 487), in a California courthouse in 1993. The execution of the applicant’s sentence of one year in jail was suspended; he was placed on summary probation for three years, and was ordered to pay an assessment, a fee, and restitution.

The applicant’s convictions involve moral turpitude. Embezzlement was found to be a crime of moral turpitude in *Matter of Batten*, 11 I&N Dec. 271 (BIA 1965). Grand theft under Cal. Penal Code § 487 was found to involve moral turpitude in *Rashtabadi v. INS*, 23 F.3d 1562 (9th Cir. 1994). Thus, the district director was correct in finding the applicant inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(h) of the Act provides that the Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. The applicant's admission to the United States must not be contrary to the national welfare, safety, or security of the United States. Section 212(h)(1)(A)(ii) of the Act. The applicant must establish that he or she has been rehabilitated. Section 212(h)(1)(A)(ii) of the Act.

The activities for which the applicant was deemed inadmissible occurred more than 15 years ago. Section 212(h)(1)(A)(ii) of the Act requires that his admission to the United States not be contrary to the national welfare, safety, or security of the United States. No documentation in the record suggests that the applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States.

Section 212(h)(1)(A)(ii) of the Act also requires that the applicant establish that he has been rehabilitated. The record reflects that a restraining order had been issued against the applicant in 2001. There is no documentation in the record reflecting that the applicant has a history of steady employment or payment of taxes. The AAO therefore finds the record indicates that the applicant has not been rehabilitated.

The applicant is eligible to apply for a section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act, which is dependent upon a showing that the bar imposes an extreme

hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The applicant's qualifying relatives are his naturalized citizen wife and U.S. citizen son. If extreme hardship to the 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).

"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).

The record contains letters, marriage certificates, birth certificates, wage statements, income tax records, school records, and other documents.

On appeal, counsel states that the [REDACTED] have an eight-year-old son who would experience extreme hardship if he were to live in the Philippines. Counsel states that the [REDACTED]' son has resided in the United States his entire life, is an exceptional student, and participates in extracurricular activities. Counsel asserts that their son does not speak or really understand Tagalog, and to uproot him at this stage in his education and social development to live in the Philippines would be a significant disruption. Counsel states that on December 12, 2002, the [REDACTED] experienced the loss of their second born son, [REDACTED] who was born with a heart defect, and the family will not be able to visit his gravesite if they lived in the Philippines.

In her declaration, [REDACTED] stated that she has been married to the applicant for 10 years and they have worked hard to keep their family together. She stated that her husband took care of their son until he could attend pre-school because he did not have employment authorization. She stated that she had a difficult second pregnancy and that her infant did not survive a second heart operation, which devastated her family. She indicated that she is dependent on her husband emotionally, financially, and socially; and that her son has a close relationship with his father. She stated that her son attends private school and does not speak Tagalog.

The wage statements reflect that [REDACTED] earns \$12.05 per hour.

The income tax records for 2004 reflect income of \$60,468, and show [REDACTED] as a diet technician and [REDACTED] as an assistant floor person.

In rendering this decision, the AAO has carefully considered the documentation in the record.

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's qualifying relative must be established in the event that he or she joins the applicant, and in the alternative, that he or she remains in the United States without 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 fails to establish that the applicant's wife or son would endure extreme hardship if she or he remained in the United States without the applicant.

[REDACTED] indicates that she depends on her husband for financial support. However, the applicant submitted no documentation of his family's household expenses. The wage statement ending December 24, 2005 reflects [REDACTED] as earning \$25,394.42 in 2005. In the absence of documentation of household expenses, the AAO cannot determine whether [REDACTED] would experience extreme economic hardship if she were to remain in the United States without her husband. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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).

The record reflects that the applicant's wife is very concerned about separation from her husband. However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the 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. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (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.

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 wife and son, if they remained in the United States without the applicant, 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 endured by the applicant's wife and son, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The documentation in the record is sufficient to establish that the applicant's wife or son would experience extreme hardship if she or he were to join the applicant to live in the Philippines.

The conditions in the country where the applicant's wife and son would live if she joined her husband are a relevant hardship consideration. "While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives." *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), citing *Matter of Anderson*, 16 I & N Dec. 596 (BIA 1978).

Counsel and [redacted] indicate that the applicant's son would experience extreme hardship in the Philippines because he has lived his entire life in the United States and is not proficient in Tagalog.

U.S. courts have held that the consequences of deportation imposed on citizen children of school age must be considered in determining extreme hardship. For example, *In Re. Kao & Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to transition to life in Taiwan; she had lived her entire life in the United States, was completely integrated into an American lifestyle, and uprooting her at this stage in her education and her social development would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the court indicated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. And, in *Prapavat vs. I.N.S.*, 638 F. 2nd 87, 89 (9th Cir. 1980) the court found the BIA abused its discretion in concluding that extreme hardship had not been shown in light of the fact that the aliens' five-year-old citizen daughter, who was attending school, would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

Based on the aforementioned decisions, the AAO finds that the applicant's nine-year-old son would experience extreme hardship if he were to join his father to live in the Philippines.

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 in the event that the applicant's wife and son remained in the United States without him. 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 section 212(h) of the Act, 8 U.S.C. § 1182(h).

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(h) 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.