

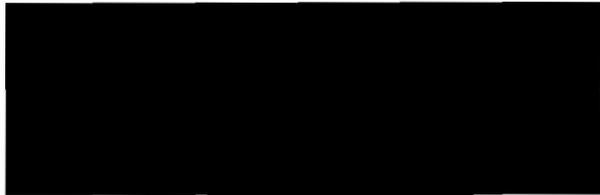
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2



FILE:

Office: MANILA, PHILIPPINES

Date:

JUL 16 2008

IN RE:

Applicant:



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:

SELF-REPRESENTED

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Officer in Charge, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 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)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of her ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The officer in charge found the applicant had failed to establish that her U.S. citizen daughter would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant indicates that she is elderly, and that her daughter will suffer extreme emotional hardship if she is unable to live with her in the United States.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Criminal history evidence contained in the record reflects that on March 13, 2000, the applicant was convicted of Checks Without Sufficient Funds, in violation of Section 1 of the Philippine, Batas Pambansa Blg.22. The applicant was initially sentenced to one-year imprisonment, and P1,000.00 in costs to indemnify the complainant. Her sentence was subsequently changed to 30 days imprisonment and P20,000.00 in costs to indemnify the complainant.

The record reflects that on October 4, 2000, the applicant was convicted of False Testimony in Other Cases, in violation of the Revised Penal Code of the Philippines, Book Two, Title One, Section 2, Art. 183. The applicant was sentenced to one-month imprisonment for each count (2) and payment of the face value involved.

The Philippine, Batas Pambansa Blg.22 provides in pertinent part:

Section 1. *Checks without sufficient funds.* – Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not

less than thirty days but not more than one (1) year or by fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Sec. 2. Evidence of knowledge of insufficient funds. – The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within (5) banking days after receiving notice that such check has not been paid by the drawee.

The Revised Penal Code of the Philippines, Book Two, Title One, provides at Section Two, Article 183:

False testimony in other cases and perjury in solemn affirmation. – The penalty of arresto mayor in its maximum period to prision correccional [*sic*] in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

A review of the crimes committed by the applicant reflects that they qualify as crimes involving moral turpitude. The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

Each offense committed by the applicant contains an element of knowing or intentional corrupt conduct. Moreover, “a crime having as an element the intent to defraud clearly is one involving moral turpitude.” *McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir. 1980.) Furthermore, both issuing a check with insufficient funds and making false statements have specifically been found to be crimes involving moral turpitude. *See Matter of McClean*, 12 I&N Dec. 551 (BIA 1967) and *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992.) The applicant is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2)

. . . .

(1)(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

A section 212(h) 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.

Evidence in the record reflects that the applicant has a U.S. citizen daughter. The applicant's daughter is therefore a qualifying family member for purposes of section 212(h) of the Act. The AAO notes that hardship to the applicant may be considered only insofar as it is established that it causes direct hardship to her daughter.

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."

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). In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

The record contains the following evidence relating to the applicant's extreme hardship claim:

A letter written by the applicant's daughter ([REDACTED]), stating that her mother is 77 years old and lives alone in the Philippines. Ms. [REDACTED] states that she is an only child, and that she and her mother's only living brother live in the United States. She states that her mother has

only a small pension to live on in the Philippines. She states further that she is unable to talk on the phone with her mother because her mother's hearing has deteriorated. Ms. [REDACTED] states that she wants to have her mother near her for her mother's remaining years, so that she can take care of her, and so that her mother can see, and be with, her family and grandchildren.

A certification letter from the Social Security System in the Philippines, certifying that the applicant receives a monthly retiree pension of Php 1,905.35.

A medical certificate reflecting that the applicant wears corrective glasses, and that she has experienced increased deafness due to age.

The AAO has reviewed all of the evidence contained in the record. Upon review of the evidence, the AAO finds that the applicant has failed to demonstrate that her daughter would suffer hardship beyond that which is normally expected upon the removal of a family member, if the applicant is denied admission into the United States.

The evidence in the record fails to demonstrate that [REDACTED] would suffer extreme emotional hardship if the applicant were denied admission into the United States. The Board of Immigration Appeals 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 and does not constitute extreme hardship. The record contains no evidence to establish that [REDACTED] would suffer emotional hardship beyond that normally suffered upon the removal of a family member.

The applicant made no claim relating to whether [REDACTED] would suffer extreme hardship if the applicant were denied admission into the United States and [REDACTED] moved to the Philippines to be with her mother. The applicant therefore failed to establish that her daughter would suffer extreme hardship if she moved to the Philippines.

Having found that the applicant is ineligible for relief, the AAO notes no purpose in addressing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act 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 in the present matter. The appeal will therefore be dismissed, and the Form I-601 application will be denied.

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