



U.S. Citizenship
and Immigration
Services

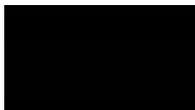
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FILE:



Office: MANILA, PHILIPPINES

Date: **JUL 29 2008**

[consolidated therein]

IN RE:

Applicant:



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:

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 waiver application was denied by the Officer-in-Charge (OIC), Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 using an altered birth certificate in order to enter the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse and daughter.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *OIC's Decision*, dated March 22, 2006.

On appeal, the applicant, through counsel, asserts that "[t]he Service clearly erred in its application of the Law in this case. The Officer writing this decision did not analyze the case thoroughly, considering and weighing [sic] all the facts and properly applying the law." *Form I-290B*, filed May 18, 2006.¹

The record includes, but is not limited to, counsel's appeal brief, a letter and affidavits from the applicant's wife, the applicant's marriage certificate, documentation on the applicant's daughter's disability, and the altered birth certificate that the applicant used to enter the United States. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) In general.-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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary],

¹ The applicant was represented on appeal by [REDACTED] who was expelled from the practice of law before the Department of Homeland Security, including Citizenship and Immigration Services, on September 26, 2007. While the AAO will accept all submissions, the decision will be sent only to the applicant and he will be considered self-represented.

waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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...

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress did not include extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on September 1, 1998, the applicant entered the United States as the child of a K-1/K-2 fiancée visa beneficiary.² On September 8, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 30, 2001, the District Director, Las Vegas, Nevada, denied the applicant's Form I-485. In October 2004, the applicant departed the United States. On November 5, 2004, the applicant's United States citizen fiancée filed a Form I-129F on behalf of the applicant. **On May 9, 2005, the applicant's Form I-129F was approved.** On November 18, 2005, the applicant filed a Form I-601. On May 18, 2006, the OIC denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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

² The AAO notes that the applicant submitted an altered birth certificate demonstrating that he was the son of [REDACTED] and was born on May 24, 1978; when in actuality, the applicant is the son of [REDACTED] and he was born on January 31, 1970.

conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's wife will suffer extreme hardship if she joins the applicant in the Philippines. See *Appeal Brief*, dated April 17, 2006. Counsel claims that "[t]he Service did not properly consider evidence of [the applicant's wife's] emotional hardship...[The applicant's wife] loves and relies upon her husband as a major support in her life. She would indeed suffer psychologically if [the applicant] is not allowed to join her here in the United or if she is forced to move to the Philippines to be with him." *Id.* at 3. The applicant's wife states "[i]f [the applicant] is not allowed to join [her] in the United States, [she] would be devastated. [She] would not have anything to look forward to at the end of the day." *Affidavit of* [REDACTED] dated April 17, 2006. The AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant's wife is suffering from any depression or anxiety or whether any depression and anxiety is beyond that experienced by others in the same situation. Counsel states the applicant's wife's siblings and mother reside in the United States. See *Appeal Brief, supra*. The applicant's wife states "[i]t would be a great hardship for [her] to have to leave [her] family here in the United States. It would be an impossible decision for [her] to have to choose between them and [her] husband." *Affidavit of* [REDACTED] *supra*. The AAO notes that the applicant's daughter was diagnosed with cerebral palsy – spastic diplegia, and "needs assistance in all areas of living." *Individualized Education Program Worksheet, Clark County School District*, dated January 5, 2004. The applicant's wife states "[s]uch condition prevents [her daughter] from walking and talking. She has to be in a wheelchair and wears special brace for her legs. In addition, she needs to be fed and ministered all things necessary for her day-to-day existence. With these, constant supervision is required." *Letter from* [REDACTED] dated December 28, 2005. The applicant's wife states that when she took her daughter to the Philippines to visit the applicant, "it was extremely difficult to take care of her. She missed her therapy that she receives in the States, three times a week. Her health was affected negatively while she was in the Philippines so [they] had to return. [They] have no medical insurance in the Philippines to help with her care. Here in the United States, she receives Medicaid...[Her daughter] currently attends three types of therapies: occupational, speech, and physical therapies – each of them three times a week." *Affidavit of* [REDACTED] *supra*. The applicant's wife states that she receives health insurance through her employment that helps pay for her daughter's medical bills. See *Affidavit from* [REDACTED] dated December 15, 2004. The applicant's wife claims she needs the applicant in the United States to "help care for [their] household...[She and the applicant] both contribute financially to [their] household." *Affidavit of* [REDACTED] The AAO notes that there is no evidence in the record that the applicant has ever contributed financially to his wife.

The record establishes that the applicant's spouse would suffer extreme hardship if she joins the applicant in the Philippines. The AAO notes that all of the applicant's wife's family is located in the United States, she has no family ties to the Philippines besides the applicant, she is the primary wage earner, and her employment provides health insurance for the family. However, counsel did not establish that the applicant's wife would suffer extreme hardship if she stays in the United States without the applicant. The applicant's wife states she needs the applicant to help care for their daughter; however, it has not been established that the applicant's wife's family could not help care for the applicant's disabled daughter. The AAO notes that the applicant departed the United States in October 2004, and it has not been established that his wife cannot provide for her daily needs without him. Additionally, the AAO notes that the record fails to demonstrate that

the applicant is unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she remains in the United States.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(a)(6)(C)(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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.