



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO

Date: **JUN 20 2008**

IN RE:

[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), 8 U.S.C. section 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, on July 20, 2004 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her 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 him.

The record reflects that the applicant used the passport and visa of an individual named Lea Pineda to obtain admission into the United States on June 8, 1989. The applicant's spouse initially filed a Form I-130 petition on November 23, 1998. The petition was approved on January 3, 2001. The applicant also filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on November 23, 1998. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 9, 2001.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated August 27, 2001.

On September 26, 2001, the applicant filed a Form I-290B to appeal the district director's August 27, 2001 decision. Although the AAO had not yet rendered a decision on the appeal, the district director issued a decision on July 2, 2002 denying the applicant's Form I-485 adjustment application. The district director erroneously stated that no appeal had been filed.

On June 30, 2003, the applicant's spouse filed another Form I-130 petition on the applicant's behalf. The petition was approved on February 26, 2004. The applicant filed the present Form I-485 adjustment application on June 30, 2003 and the Form I-601 waiver application on April 28, 2004.

The district director again concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the second waiver application accordingly. *Decision of District Director*, dated July 20, 2004. On August 23, 2004, the applicant submitted a Form I-290B appealing the district director's decision.

The AAO is issuing a separate decision finding that the filing of the present I-485 and I-601 applications has rendered moot the applicant's appeal of the August 27, 2001 decision.

On appeal, counsel¹ contends that the district director abused his discretion in denying the waiver application. Counsel states that the applicant's spouse is "solely dependent on the applicant for his health insurance which he needs to attend to his serious medical problems."

In support of the present waiver application, the applicant has submitted a statement; a letter from her spouse's physician [REDACTED]; an affidavit from the applicant's spouse; a psychological evaluation from [REDACTED]; letters and statements from family members; and a letter from [REDACTED] the St. Andrew Catholic Church in Daly City, California.

The record also contains the following documents submitted with the prior waiver application: a declaration from the applicant; a declaration from the applicant's spouse; a psychological evaluation from [REDACTED]; a letter from [REDACTED] of the St. Andrew Catholic Church in Daly City, California; letters from family and friends; numerous articles and reports concerning conditions in the Philippines; family photographs; and identification documents. The record also contains tax, employment, insurance and other financial documents for the applicant and her spouse. 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.

As stated above, the record reflects that the applicant used the passport and visa of an individual named Lea Pineda to obtain admission into the United States on June 8, 1989. The applicant has not disputed that she is inadmissible under section 212(a)(6)(C) of the Act.

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 or her children 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 applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is

¹ The Form I-290B lists [REDACTED] as the applicant's attorney, but there is no Form G-28, Notice of Entry of Appearance of Attorney or Representative, in the record from [REDACTED]. On April 11, 2008, a fax was sent to the fax number provided by [REDACTED] requesting that he submit a properly executed G-28. To date, no response has been received. Consequently, [REDACTED] remains the applicant's counsel of record. All representations will be accepted and considered, but the appeal will be sent to the applicant and [REDACTED] only. Additionally, [REDACTED] stated on the Form I-290B that he would be submitting a brief and/or evidence to the AAO within 30 days. In the April 11, 2008 fax, the AAO also informed [REDACTED] that it had no record that any further evidence or brief was ever received and requested that he submit such a brief or evidence, along with evidence of the date it was originally filed. As stated above, no response has been received. Therefore, the record is considered complete.

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).

The Ninth Circuit Court of Appeals has 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 his letter dated March 26, 2004, the applicant’s spouse asserts that he is not currently employed and is wholly dependent on the applicant for financial support and her employer-provided health insurance. He contends that without the applicant, he would “feel empty inside because [he doesn’t] do anything without her.” He asserts that he someday hopes to start a family with the applicant. The applicant’s spouse further states that if the applicant is forced to go back to the Philippines, he will follow her there because he has “nothing here” and “wouldn’t be able to make it without her support and care” [REDACTED] notes in his letter that the applicant’s spouse suffers from hypertension, hypercholesterolemia, glucose intolerance,

tobacco use and obesity. [REDACTED] states that the applicant's spouse is at risk for development of type 2 diabetes and coronary artery disease and is in need of "close monitoring and followups." [REDACTED] states in his evaluation that the applicant's spouse suffers from Panic Disorder and Generalized Anxiety Disorder because of stress related to the applicant's immigration matters. [REDACTED] indicates that if the symptoms currently experienced by the applicant persist, either because the applicant is removed from the United States and/or the applicant relocates to the Philippines, he will suffer a Major Depressive Episode

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 recognizes that the applicant's spouse will suffer emotionally and financially as a consequence of separation from the applicant if he chooses to remain in the United States, but the applicant has failed to submit sufficient evidence showing that this hardship, when viewed cumulatively with other hardship factors, rises to the level of extreme hardship. 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 generalized anxiety disorder 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 he was laid off from his job and that he is financially dependent on the applicant. However, the applicant has submitted no recent documentary evidence showing her spouse's employment difficulties, or detailing the extent of her financial assistance to her spouse. Although the statements by the applicant's spouse and other relatives are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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 recognizes that there is hardship inherent in the separation of family members, but notes that the Ninth Circuit in both *Salcido-Salcido* and *Cerrillo-Perez* considered the hardship of separating parents from minor dependent children. The hardship demonstrated by the evidence in the record is the typical result of removal or inadmissibility and it does not rise to the level of extreme hardship based on the record. The 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 also has not demonstrated that her spouse would suffer extreme hardship if he relocated to the Philippines. The applicant's spouse is a native of the Philippines. It is noted that the applicant's spouse does not assert in his letter of March 26, 2004 that he would suffer hardship in the Philippines if he relocated there. The AAO acknowledges the evidence of country conditions submitted previously, but notes that the article and reports submitted are dated in 2001 or earlier. If the applicant's spouse is unemployed as claimed, then relocation to the Philippines will not result in loss of employment. There is no specific evidence showing that the applicant, or her spouse, would be unable to support themselves in the Philippines.

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 her lawful permanent resident mother 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 she 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.