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U.S. Citizenship  
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FILE:

Office: PHOENIX

Date: JUN 23 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, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Phoenix, Arizona 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 has admitted to an officer of USCIS that she previously represented herself as married (while still single) to a consular officer in the Philippines in order to demonstrate, by showing ties to the Philippines, her nonimmigrant intent and thereby increase the likelihood she would be issued a nonimmigrant visa. The applicant was admitted to the United States on July 18, 2002 in B-1 nonimmigrant status with a period of authorized stay expiring on September 22, 2002. The applicant remained in the United States after her period of authorized stay expired and married her spouse, [REDACTED] on March 12, 2005. The applicant's spouse filed the Petition for Alien Relative on July 25, 2005. The petition was approved on March 8, 2006. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on July 25, 2005. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 8, 2006.

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 April 17, 2006.

On appeal, counsel asserts that denial of the waiver application would cause extreme hardship to the applicant's spouse because he would be separated from all other family causing him to suffer great emotional anguish, he would suffer extreme economic hardship if he relocated to the Philippines or had to support the applicant from the United States, and his mental health would be severely adversely affected. *Letter Brief of Counsel*, dated June 14, 2006, at 1-4. Counsel observes that courts have found the single most important hardship factor to be family separation, and contends that the hardship factors in this case are similar to those discussed by the 7th Circuit Court of Appeals in *Opaka v. INS*, 94 F.3d 392 (1996), in which "the court vacated a decision of the Board of Immigration Appeals to deport a husband, solely because, as the court noted, the husband's wife was being allowed to remain in the United States and the family would be forced to separate." *Id.* at 2.

The record contains, among other documents, a letter from the applicant's spouse; analysis of the applicant's and her spouse's finances and expenses in the Philippines; The CIA World Factbook report for the Philippines; letters from Philippine residents [REDACTED] and [REDACTED]; a psychological evaluation by [REDACTED], Ph.D.; employment, tax and insurance records; and wedding photographs. 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 has admitted that she previously represented herself as married (while still single) to a consular officer in the Philippines in order to demonstrate, by showing ties to the Philippines, her nonimmigrant intent and thereby increase the likelihood she would be issued a nonimmigrant visa. 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 herself 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 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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. 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/she accompanies the applicant or in the event that he/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.

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 would suffer emotionally as a result of separation from the applicant if he remains in the United States, but there is insufficient evidence in the record showing that this hardship, when combined with other hardship factors, is not merely the common result of removal or inadmissibility, and it does not rise to the level of extreme hardship based on the record. 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). Dr. [REDACTED] has diagnosed the applicant’s spouse with “Adjustment Disorder with mixed Anxiety and Depressed Mood,” and states that he is “at high risk for recurrence of clinical depression and perhaps suicide if his wife is deported.” Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single one-hour 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 clinical depression or 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 AAO notes that the Ninth Circuit in both *Salcido-Salcido* and *Cerrillo-Perez* considered the hardship of separating parents from minor dependent children, not the hardship involved in separating recently married adults. The applicant and her spouse were married in 2005, and they have no children. The *Opaka* decision cited by counsel does not mandate a different result. The *Opaka* court did not make a finding of extreme hardship, but rather vacated the decision of the Board of Immigration Appeals to remove the petitioner because the Board had not considered the fact that the petitioner’s wife had recently been granted permanent resident status. See 94 F.3d at 395. The circumstances of family separation have been considered in this case.

The financial information submitted by the applicant shows that the applicant’s spouse has earnings that would allow him to meet his current financial obligations even without the applicant’s financial contribution of approximately \$900 per month. The information about the Philippines submitted by the applicant does not

demonstrate that the applicant would be unable to secure employment there to support herself. The AAO notes that [REDACTED] and [REDACTED], who have indicated that they face difficulties meeting their financial obligations and “having a good and luxurious” life in the Philippines, are both working mothers caring for and supporting children in addition to themselves.

The AAO acknowledges that the applicant’s spouse, who is a native of the United States with no family or economic ties to the Philippines, in light of economic conditions in the Philippines, would experience extreme hardship if he relocated there. However, the applicant does not indicate in his affidavit whether he intends to relocate to the Philippines, and the applicant has failed to demonstrate that the applicant’s spouse will suffer extreme hardship if he remains in the United States.

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 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 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.