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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO, IL

Date:

OCT 28

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:



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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that the district director did not consider the cumulative financial and emotional hardship that his wife would suffer if he were denied admission into the United States. The applicant indicates that his wife is a U.S. citizen; that he has been married to his wife for over six years; and that he and his wife have two U.S. citizen sons and are expecting a third child. The applicant asserts that his wife provides for the family financially, and that he is the primary caretaker for their children, and he indicates that his wife would suffer financial hardship if she had to pay someone to provide full-time care to their children in the United States. The applicant asserts that his wife would also suffer extreme hardship if she moved with the family to the Philippines, because the Philippine economy is poor and they might not find work to support themselves.

Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) provides in pertinent part that:

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

The record reflects that on July 1, 1995, the applicant presented a fraudulent passport and visa to U.S. officials in order to gain admission into the United States. Accordingly, the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 record reflects that the applicant's wife is a naturalized U.S. citizen. She is thus a qualifying relative for section 212(i) of the Act purposes. U.S. citizen or lawful permanent resident children are not included as

qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S. citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's wife.

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."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

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

An undated affidavit signed by indicating that her family would be incomplete without the applicant, and stating that her husband provides emotional and physical support to the family, and that he cares for their children, allowing her to support the family financially. states that she suffered from post partum depression after the birth of her eldest child, and that her husband helped her through the depression. She indicates that she would need the applicant near her if she suffered from post partum depression again.

A May 30, 2006 letter signed by , stating that was seen at his office twice in May 2003, and that she was diagnosed with Major Depressive Disorder, Single Episode.

U.S. birth certificates reflecting that the applicant and his wife have two sons: born December 18, 2002 (5 years old) and born August 5, 2004 (4 years old.)

Employment information reflecting that worked as a full-time registered nurse contractual worker from 2004-2005, and that on February 9, 2006, she was employed by Provena Saint Joseph Hospital as a 20 hour per week, part-time registered nurse.

2001-2005 Federal Income Tax information for

2003 and 2005, Federal Income Tax information reflecting that the applicant worked at Dominicks Finer Foods and earned \$30,003 in 2003, and \$12,229 in 2005.

Three articles discussing causes, effects and treatments for post partum depression.

A general article on childcare costs in the U.S.

The March 2006, U.S. Department of State, Country Profile for the Philippines.

The AAO finds, upon review of all of the evidence, that the applicant has failed to establish that his wife would suffer extreme hardship if the applicant were denied admission into the United States, and she remained in the United States.

Although the medical evidence reflects that [REDACTED] suffered post partum depression in May 2003, the AAO notes that the medical evidence fails to clarify the specific effects of the post partum depression. The evidence additionally fails to demonstrate that the applicant's wife suffered from post partum depression after her second child's birth. Furthermore, the record lacks evidence to establish that [REDACTED] was pregnant with a third child when the present appeal was filed, and the medical evidence fails to establish that Ms. [REDACTED] has suffered from post partum depression or any other medical or psychological condition since May 2003. The affidavit evidence in the record additionally fails to establish that the applicant's wife would suffer emotional hardship beyond that commonly associated with removal if the applicant were denied admission into the United States. The applicant has also failed to establish that his wife would suffer extreme economic hardship if the applicant were denied admission into the United States. The AAO notes 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 record reflects that [REDACTED] is the primary wage-earner in the family. The documentation regarding childcare submitted on appeal indicates that a sizeable portion of her salary would go towards childcare, but, nothing was submitted to establish her actual income or any other expenses she would have, and therefore fails to demonstrate that [REDACTED] would be unable to care for, or support her family if the applicant were denied admission into the United States.

The evidence in the record also fails to establish that [REDACTED] would suffer extreme emotional or financial hardship if she moved with her family to the Philippines. The Board 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. Hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, has also been found not to rise to the level of extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986.) The record reflects that the applicant's wife is familiar with the language, culture and environment in the Philippines, as she is originally from that country. The AAO notes further that the country conditions evidence submitted by the applicant is general in nature, and fails to address the applicant's specific situation or demonstrate that the applicant and his wife would be unable to obtain employment in the Philippines.

A section 212(i) 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. Because the applicant failed to

establish that his wife would suffer extreme hardship if he is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed, and the application will be denied.

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