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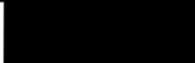
U.S. Citizenship
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FILE:



Office: HONOLULU, HI

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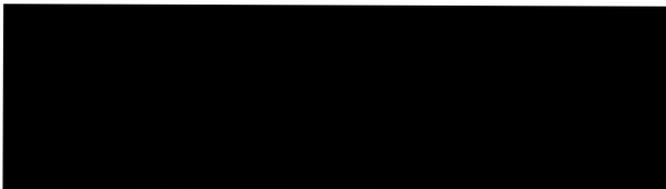
IN RE: Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii, 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. The record reveals that the applicant entered the United States in August 1994 using a passport belonging to him, but which contained a I-551 Stamp, Temporary Evidence of Lawful Admission for Permanent Residence, with an A number belonging to another individual. The applicant 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), for having procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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 U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 18, 2006.¹

In support of the appeal, counsel submits a brief, dated March 16, 2006; documentation with respect to the applicant's spouse's mental health; and evidence of the applicant's biographic information in the form of a birth certificate from the Office of the Municipal Civil Registrar, Republic of the Philippines. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

¹ In the Decision, the District Director notes that "...on May 23, 2003, you presented a passport to an Officer of this Agency claiming it to be yours. An admission stamp was endorsed.... The 'A' number that is associated with that same admission stamp belongs to another named individual other than yourself. This Agency is unable to verify your true identify, as it appears that you entered the United States by means of fraudulent documentation...." *Decision of the District Director*, at 2.

Based on the record, the applicant admitted to having presented a false I-551 stamp containing an "A" number that did not belong to him, but nothing in the record indicates that the applicant is anyone other than who he says he is. In fact, the record indicates that the passport the applicant presented at the time of entry contained the biographic information he has noted in all immigration forms to date. Thus, although the AAO has determined that the applicant committed fraud, it is for the use of a fraudulent I-551 stamp containing an "A" number that did not belong to him, not for the use of a fraudulent identity and/or passport.

- (1) The Attorney General [now the Secretary 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 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...

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

This matter arises in the Honolulu district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court 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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

Section 212(a)(6)(C)(i) 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 or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse.

Counsel contends that the applicant's spouse will suffer emotional hardship if the applicant is removed from the United States. As the applicant's spouse states in her declaration,

...It is hard to do the role of a father and a mother because the children are very young and it needs a lot of patience and hard work. Please grant my husband [the applicant] a waiver to become a lawful permanent resident because the burden of taking care of and raising the children, as well as doing all the household chores

by myself would be extreme [sic] difficult and stressful. I cannot imagine that I will be able to have a normal life....

...My husband is my soul mate and it is hard for me to solve problems and make decisions without him....

Declaration of [REDACTED] dated February 17, 2004.

In support of the applicant's spouse's statements, counsel offers a psychological evaluation from [REDACTED] based on an interview he conducted with the applicant's spouse on March 1, 2006. In said evaluation, [REDACTED] concludes that the applicant's spouse "...presents with symptoms of anxiety associated with her husband's [the applicant's] immigration difficulty. Patient's distress is impacting her interactions with her children as well as her ability to focus on work.... her present difficulty will likely resolve or worsen depending on the outcome of her husband's immigration hearing.... Initial Treatment Plan: Supportive therapy- encouraged patient to stay active with gardening and spending time with family; get adequate sleep; use prayer focusing on positive outcome; keep in touch with friends/church support...." *Psychological Evaluation by* [REDACTED] dated March 1, 2006.

The evaluation provided by [REDACTED] does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologists' findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, **although** [REDACTED] has determined that the applicant's spouse is experiencing adjustment disorder with anxiety, the record does not contain any documentation that establishes the applicant's spouse's treatment, if any, its short and long-term treatment plans, and the gravity of the situation. Finally, it has not been established that the applicant's spouse's situation is extreme as she is able to maintain full-time gainful employment as an Exercise Aide, since March 1996, as documented by the letter provided by [REDACTED] Human Resources Assistant, [REDACTED] dated September 24, 2002, in addition to maintaining a second job. *Supra* at 1.

The psychological evaluation of the applicant's spouse shows that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. The applicant's spouse further references the financial hardship she would experience were the applicant removed from the United States. As the applicant's spouse states,

...I will become the sole income earner in the family, responsible for the expenses for our mortgage, food, utility bills, car loan payments, life insurance, baby-sitter's fee, and other expenses.... I may lose my second job that help us a lot with our expenses because nobody will watch and take care the children while I am at work. I will be forced to drop my son in the school very early in the morning at 6:30 a.m. and then I will drop my daughter at the baby-sitters house at 6:45 a.m. because I start work at 7:00 a.m. in my job. To drop my son at the school very early would be a safety concern for nobody will watch him until classes starts at 7:55 a.m. I work at my second job from 3:45 p.m. to 7:30 p.m. My husband picks up my son from school, then our daughter from the baby-sitter and watches and takes care of them while I'm at work. If I do not have my husband, I will be forced to quit my job.... We have relatives and friends who could help us but I cannot rely and depend on them because they have jobs and families too....

Supra at 1.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

To begin, no documentation has been provided by counsel that outlines the applicant's and his family's income and expenses, to establish that without the applicant's income and physical presence in the United States, his spouse will experience financial hardship. Moreover, it has not been established that the applicant's spouse would be unable to find affordable care for her children and/or an alternate work schedule, thereby ensuring that she earns sufficient income to support the household and at the same time, has quality time with her children. Although the applicant's spouse may need to make alternate arrangements with respect to her employment and housing situation, it has not been established that such arrangements would cause her extreme hardship. Moreover, the record indicates that the applicant's sister and brother-in-law, both U.S. citizens, live with the applicant and his spouse; it has not been established that they would be unable to assist the applicant's spouse should the need arise. *See Letter from* [REDACTED] dated February 17, 2004.

Finally, counsel provides no evidence to substantiate that the applicant, a House Attendant for a resort, would not be able to assume a similar position, relatively comparable in pay, were he to relocate to the Philippines, or

any other country of his choosing, thereby assisting the applicant's spouse with the U.S. household expenses. 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)).

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad, based on the denial of the applicant's waiver request. The AAO notes that the applicant and/or his spouse make no reference to the hardships, if any, the applicant's spouse would face were she to relocate to the Philippines, her home country, to reside with the applicant due to his inadmissibility. The only reference to this criteria is made by counsel, who states as follows:

...Applicant's wife has not lived in the Philippines since October 1994, now nearly twelve years ago. The District Director also did not consider that Applicant's eldest child, although only five years old at the time the application was submitted, is now seven years of age and already had started school in the United States....

Brief in Support of Appeal, dated March 16, 2006.

No evidence has been provided to establish what specific hardships the applicant's spouse would face were she to relocate to the Philippines due to the applicant's removal from the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 will face extreme hardship if the applicant is removed. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is no documentation establishing that her financial, emotional or psychological hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional and psychological hardship she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 remains entirely with the applicant. 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. The waiver application is denied.