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Office: MANILA, PHILIPPINES

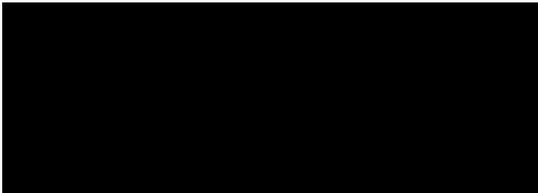
Date: SEP 07 2005

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Immigration Attaché, Manila, Philippines. The matter 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 to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting immigration attaché found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Acting Immigration Attaché*, dated May 14, 2004.

On appeal, the applicant's spouse asserts that the acting immigration attaché made factual errors in his decision and the applicant's spouse asserts that he is undergoing counseling, the applicant is not responsible for her immigration record and the applicant was only aware of her unlawful status for five months. *Form I-290B*, dated June 14, 2004.

In support of these assertions, the applicant's spouse submits an affidavit, a support letter and a psychological evaluation. The record also includes, but is not limited to, congressional inquiry letters, the applicant's resume and list of accomplishments, pictures of the applicant and her spouse, letters from the applicant's spouse and several support letters. The entire record was reviewed and considered in rendering a decision on the appeal.

First, the applicant's spouse notes factual errors in the acting immigration attaché's decision. *See id.* The AAO agrees with the applicant's spouse's statements that the I-130 was approved when the denial letter was written, not pending as stated in the denial letter, and that the applicant's family was not in the United States pending a decision on their status as stated in the denial letter, rather they returned to the Philippines.

In the present application, the record indicates that the applicant entered the United States on a visitor visa in 1993. After not complying with an order of voluntary departure from March 19, 1996, the applicant departed the United States on July 25, 2002. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 25, 2002, the date she departed the United States. In applying for a spouse visa, the applicant is seeking admission within 10 years of her July 25, 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The applicant's spouse asserts that the applicant was a minor when she entered the United States, her parents did not reveal to her the nature of her immigration status, she is not responsible for her past immigration record and she left five months after finding out that she was out of status. *Form I-290B*. The actions of the applicant's parents are unfortunate, however, the AAO is bound by the law. There is an unlawful presence exception for minors under the age of 18. Unlawful presence only accrues upon reaching the age of 18 and the applicant turned 18 on February 11, 1997. Although sympathetic to the applicant's situation, the relevant immigration law does not provide an exception for unlawful presence due to ignorance of the law for those over the age of 18.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors are relevant in section 212(a)(9)(B)(v) waiver proceedings and include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The record indicates that the applicant's spouse's parents and two siblings reside in the United States, although their legal status is not mentioned in the record. *Psychologist's Letter*, at 1-2, dated July 1, 2004. The record does not indicate that the applicant's spouse has any family ties to the Philippines as he states that all of his family is in the United States. *Letter from Applicant's Spouse*, at 3, dated July 6, 2003.

The record does not include any information on the conditions in the Philippines. The record does not mention the ties of the applicant's spouse to the Philippines, although he states that he does not speak Tagalog. *Id.* The applicant's spouse details the financial impact of departure in his various letters. Specifically, the applicant's spouse details the amount of money he has spent on travel to the Philippines to visit his wife, the amount of money spent on international phone calls, the applicant's debts which he helps pay and his own debts. *Id.* However, there is no documentation to verify these assertions. The applicant's spouse also states that he is supporting the applicant from abroad and he is responsible for two households. *Id.* The record indicates that the applicant is currently working as a Product Manager in the Philippines. *Id.* Furthermore, there is no evidence that the applicant's spouse cannot obtain employment in the Philippines.

In regard to significant conditions of health, the applicant's spouse states that he is undergoing professional counseling with [REDACTED] *Form I-290B*. However, no evidence is submitted to verify this assertion. The applicant's spouse was evaluated by two other psychologists who state that he meets the formal criteria for major depressive syndrome, generalized anxiety disorder and panic disorder. *Psychologist's Letter*, at 5. The AAO notes that this is a one-time evaluation with no mention of a plan of treatment for the applicant's spouse. The record also includes numerous letters detailing the emotional struggles of the applicant's spouse. If the applicant's spouse were to join the applicant in the Philippines, the psychological issues would presumably be lessened. Lastly, there is no mention of the unavailability of suitable medical care in the Philippines.

After a thorough review of the record, the AAO finds that extreme hardship is not established in the event that the applicant's spouse relocates to the Philippines or in the event that he remains in the United States maintaining his employment. The AAO notes that as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.