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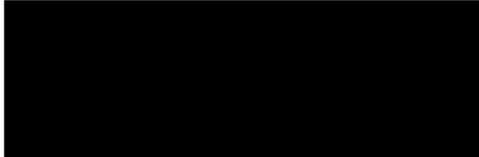
U.S. Department of Homeland Security
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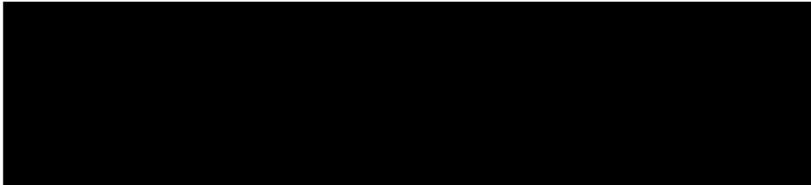


FILE: [REDACTED] Office: MANILA, PHILIPPINES Date: SEP 20 2007

IN RE: Applicant: [REDACTED]

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

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, 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, pursuant to the record, entered the United States on June 27, 1993 with a B-2 tourist visa and remained until July 7, 2001, when he voluntarily departed the United States. The officer in charge determined that the applicant was inadmissible under Section 212(a)(9)(B)(i)(II) of the Act, which 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...

Moreover, the officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 21, 2005.

In support of the appeal, the applicant has provided the following documents: a brief in support of the appeal; a copy of the applicant's marriage certificate; copies of the applicant's children's birth certificates; declarations from the applicant's spouse and their three children; a letter from the applicant's spouse's physician and supporting documentation detailing her medical condition; evidence of the applicant's spouse's employment; and copies of the applicant's spouse's most recent bank statement. The entire record was reviewed and considered in rendering this decision.

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.

To begin, the record contains several references to the hardship that the applicant's three children would suffer if the applicant's waiver of inadmissibility is not granted. As stated by the applicant's spouse, "...my children have been separated from me for 20 years and now my husband for over 5 years. Consequently, a parent-child bond has not been established which could undermine my effectiveness in exercising my parenting authority. This difficulty will be compounded by the cultural adjustment they have right now. As a single mother, it is impossible for me to provide their emotional need without the physical presence of their father. This could negatively and destructively impact their mental health which has been known [sic] as the leading cause of adolescent depression. I do not want my children to live in this emotionally unhealthy environment..." *Declaration from* [REDACTED]

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) 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(a)(9)(B)(v) 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 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. Although the applicant's spouse may need to make alternate arrangements for the emotional, physical and financial care of the children, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

Counsel also contends that the applicant's spouse will suffer emotional hardship if the applicant's waiver is not granted. As the applicant's spouse states in her declaration, "...I have experienced extreme hardships...mentally and emotionally, got sick and underwent surgery due to stress, working two (2) jobs, no sex, no love and no intimacy. If I continue to be separated from my husband [the applicant], I will end up emotionally disturbed and will not be able to function normally as a mother and at the same time as father to my children..." *Declaration from* [REDACTED] dated July 15, 2005.

In support of the applicant's spouse's statements, counsel provides a letter from a physician treating the applicant's spouse. [REDACTED] states that the applicant's spouse "...has been under my care. She still on the following current medications Xanax PRN anti depressant and Paxil 25 mg. Her current medical problems are Stress Anxiety and still experiencing on and off panic attack..." *Letter from* [REDACTED] dated November 15, 2005.

Although the physician treating the applicant's spouse has prescribed anti-depressants, the physician makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions with a mental health professional or increased medications, to further support the gravity of the situation. Moreover, the applicant's spouse's situation does not appear to be extreme as she is clearly able to maintain full-time employment, as evidenced by the pay stubs and the applicant's spouse's declaration provided by counsel.

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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In addition, the applicant's spouse, in her statement, references the financial burden of maintaining two households, one in the United States for herself and the three children, and one for the applicant who is residing in the Philippines. As the applicant's spouse states, "...I anticipate that my husband's inability to come will result to economic and parenting hardship. At this moment, my daughter and I are occupying a bedroom for \$275.00...we are all occupying one room...Even my son, [REDACTED] is functional to work and help, he needs to finish his College education. My other son [REDACTED] has just graduated high school in the Philippines needs to go to college as well...As this expected expense increase, it is impossible for me to meet the economic demands of my children without the presence of my husband who can definitely land on a lucrative job as an engineer." *Declaration from [REDACTED]* at 2. Counsel provides no documentation to establish that the applicant, born, raised and educated in the Philippines, is unable to find employment in the Philippines, thereby assisting the applicant's spouse with respect to the household expenses. Moreover, it has not been established that the applicant's sons, aged 21 and 17 at the time the appeal was filed, are unable to attend school and find part-time employment to assist with the 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)).

Finally, the AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates with 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 this case, no reasons have been provided for why the applicant's spouse, a native of the Philippines, is unable to reside with the applicant in the Philippines, or any other country of their choosing.

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 unable to reside in

the United States. 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 is any different from other families separated as a result of immigration problems. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional 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(a)(9)(B)(v) 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.