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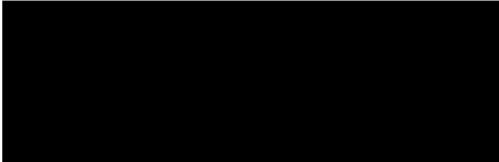
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE

Office: MANILA, PHILIPPINES

Date: SEP 20 2007

IN RE: Applicant:



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 black ink, 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 Philippines who was found inadmissible to the United States under 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. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to be able to return to the United States and reside with her U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 27, 2005.

The following documents are submitted in support of the appeal: letters from the applicant's spouse's physicians, detailing his medical condition, and supporting medical records; information about the referenced medical condition; a letter from the applicant's spouse; a letter from the applicant; two follow-up letters sent to the AAO by the applicant's spouse; and a copy of the applicant's marriage certificate. The entire record was reviewed and considered in rendering this decision.

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...

Regarding the applicant's ground of inadmissibility, the record reflects that she entered the United States on a valid tourist visa in September 2000. However, upon expiration in March 2001, the applicant remained in the United States until June 2004, when she voluntarily departed. As the applicant resided unlawfully in the United States for more than one year and has sought admission within ten years, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's spouse. 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).

The applicant contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines to reside with the applicant due to his advanced age, his medical condition and country conditions in the Philippines. The record indicates that the applicant's spouse, at the time the appeal was filed, was over 60 years old and had been diagnosed with Barrett's Esophagus Disease, a "...condition resulting from long standing acid reflux (heartburn), where the esophageal lining is converted to stomach-type tissue. The lining has the potential to develop dysplasia, a pre-malignant change...the likelihood of Barrett's patients developing esophageal cancer is 30 to 40 times that of the normal population..." *Innovative Non-Surgical Treatment for Barrett's Esophagus*, July 27, 1995. [REDACTED] Mountain View Endoscopy Center, confirms that the applicant's spouse would suffer in the Philippines because the applicant's spouse "...has been under my care for dysplastic Barrett's esophagus requiring ablation therapy that can only be done in the U.S. Because of this, he will require frequent visits and clinical/endoscopic evaluation over the ensuing several years..." *Letter from* [REDACTED] dated April 17, 2006. Based on the evidence provided, it has been established that the applicant's spouse would suffer extreme hardship were he to reside with the applicant in the Philippines, based on his documented medical condition and the inability to obtain appropriate medical treatment in the Philippines, as stated by Dr. [REDACTED] medical professional.

However, it has not been established that the applicant's spouse would encounter extreme hardship were the applicant unable to reside in the United States. To begin, no evidence has been provided by the applicant's spouse's physician that details what specific assistance the applicant's spouse needs from the applicant with respect to his medical condition and what hardship the applicant's spouse would face without the applicant to assist him. While the applicant's spouse may need to make alternate arrangements with respect to his care due to the applicant's absence, it has not been established that any new arrangement would cause extreme hardship to the applicant's spouse.

The applicant further states that the applicant's spouse "...cannot accept your decision. Since then he cannot sleep well. Every night he experienced panic and anxiety attack. His whole body trembles, he perspires a lot and his blood pressure rose up high...I am afraid he will have nervous breakdown if this goes on and on..." Letter from [REDACTED]. No medical documentation has been provided from a mental health professional confirming the applicant's spouse's mental state, its treatment and its impact on his ability to live productively without the applicant's support. 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)).

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 based on the record. 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not allowed to reside in the United States. 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.