



U.S. Department of Justice

Immigration and Naturalization Service

HEA

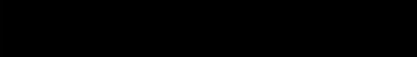
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE 

Office: MANILA, PHILIPPINES

Date: **MAR 12 2001**

IN RE: Applicant: 

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

IN BEHALF OF APPLICANT: 

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

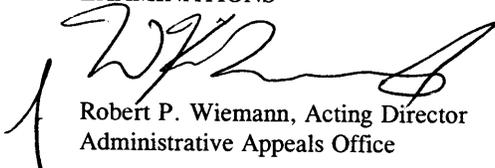
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

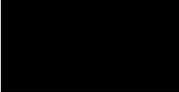
Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS



Robert P. Wiemann, Acting Director
Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the order dismissing the appeal will be affirmed. 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 by a consular officer under § 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 a period of one year or more. The applicant was admitted to the United States in October 1990 as a nonimmigrant fiancée and failed to marry the petitioner within 90 days following her admission. She remained in the United States, out of status, until her departure on October 4, 1998. The applicant subsequently married a different United States citizen in Las Vegas in June 1997 and is now the beneficiary of an approved immediate relative visa petition. She seeks the above waiver in order to return to the United States and reside with her spouse and children.

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 accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, the applicant's spouse states that he believes the decision to deny his wife's waiver request was morally incorrect with no consideration given to the future hardships he and his children would encounter. He states that if he were to relocate to the Philippines to reside with his wife, he would have to live off of his saving until he could find a job, If he were to take his children to the Philippines to reside with their mother, it would have a serious effect on them as his wife has a severe gambling problem and would rather spend her money in a casino than on her children. He concludes by stating that his wife is a model citizen, he loves her, and that his children need her caring and guiding hand.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(9) ALIENS PREVIOUSLY REMOVED.-

(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 from the United States, is inadmissible.

(v) WAIVER.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground inadmissibility for unlawful presence (entry without inspection) after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

The Board has held that extreme hardship is not a definable term of fixed and inflexible meaning, and that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. These factors should be viewed in light of the Board's statement that a restrictive view of extreme hardship is not mandated either by the Supreme Court or by its own case law. See Matter of L-O-G-, 21 I&N Dec. 413 (BIA 1996).

It is noted that the requirements to establish extreme hardship in the present waiver proceedings under § 212(a)(9)(B)(v) of the Act do not include a showing of hardship to the alien as did former cases involving suspension of deportation or present cases involving battered spouses. Present waiver proceedings require a showing of extreme hardship to the citizen or lawfully resident spouse or parent of such alien. This requirement is identical to the extreme hardship requirement stipulated in the amended fraud waiver proceedings under § 212(i) of the Act, 8 U.S.C. 1182(i).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board recently stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under § 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

There are no laws that require the applicant's United States citizen spouse or children to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). 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. See Shoostary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

It is also noted that the Ninth Circuit Court of Appeals in Carnalla-Muñoz v. INS, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in Matter of Tijam, Interim Decision 3372 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered the United States in 1990 and married her spouse in 1997. She now seeks relief based on that after-acquired equity. However, as previously noted, a consideration of the Attorney General's discretion is applicable only after extreme hardship has been established.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse (the only qualifying relative) caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to return to the United States. Hardship to the applicant's children is not a consideration in § 212(a)(9)(B)(v) waiver proceedings. 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 § 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T--S--Y--, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed.

ORDER: The order of May 17, 2000 dismissing the appeal is affirmed. The application is denied.