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U.S. Citizenship and Immigration Services

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MAR 15 2005

FILE: [redacted] Office: MANILA Date:

IN RE: [redacted]

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:

SELF-REPRESENTED

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 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 ten years of his last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The Attaché found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Immigration Attaché,* dated October 27, 2003.

On appeal, the applicant asserts that the evidence establishes that his spouse would suffer "extreme emotional, mental, spiritual, and physical" hardship and offers additional evidence in the form of statements from both himself and his U.S. citizen spouse providing additional details of the hardship that would result. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present case, the record indicates that the applicant entered the United States on or about March 12, 1995. The applicant married his U.S. citizen spouse on December 1, 2000, which was followed by the approval on July 30, 2001, of the Petition for Alien Relative (Form I-130) filed on his behalf. On August 11, 2003, the applicant and his spouse departed the United States in order to complete processing for the immigrant visa. The applicant subsequently filed an Application for a Waiver of Inadmissibility (Form I-601) in connection with his visa application to overcome the bar to admission based upon his accrual of unlawful presence in the United States between April 1, 1997, and August 11, 2003.

In applying to be admitted as an immigrant, the applicant is seeking admission within ten years of his August 2003 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.

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 himself experiences upon deportation 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 (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

The applicant asserts that his spouse would face extreme hardship if the couple were separated due to his inability to join her in the United States. The applicant notes in his original statement that his wife has suffered emotional and psychological stress, and the denial of the application would result in the foreclosure of their house, and an inability to pay the couple's bills and credit cards. *See Statement* [redacted] dated August 26, 2003, and *Supplement to Form I-601,* dated September 24, 2003.[1] In addition to the applicant's original statements, the record contains the additional statements the applicant and his spouse submitted on appeal. The applicant's spouse states that following the denial of the visa, she returned to the United States where she has "been living miserably." She notes that her work as a registered nurse is stressful and that she has relied upon the love and support of her husband to balance her work-related stress. She asserts that because of her husband's situation, she has been "struggling to fight a major nervous breakdown from my separation from my loving husband [redacted] *See Statement of* [redacted] dated

[1] It is noted that the applicant's statements refer to the hardships that both he and his U.S. citizen spouse have encountered and will encounter, as well as the hardship, largely financial, that his relatives in the Philippines will experience if his application is denied. However, as noted previously, it is only the hardship to the applicant's U.S. citizen wife which is relevant to the analysis of his eligibility for the waiver.

November 3, 2003. The applicant's spouse further states that if her husband's difficulties continue she will be forced to move to another country where her husband will be granted admission, resulting in difficulties for her in leaving the United States which has been her home for many years. *See Statement of* dated November 3, 2003. The applicant's statement on appeal is primarily a cover letter to the wife's statement, but reiterates that the applicant and his spouse have experienced extreme hardship in the form of emotional, mental spiritual, and physical hardship. *See Statement of* dated November 6, 2003.

The claim of hardship centers on the financial and emotional hardship that the applicant's spouse would experience. In terms of the financial hardship, the statements indicate that the spouse would lose the family home and would be unable to meet expenses due to the loss of the applicants' financial contributions. However, no specific evidence of the couple's financial situation or the relative incomes of each has been submitted.[2] Nevertheless, the AAO notes that according to the spouse's statement, she works at "one of the prestigious hospitals of New Jersey." *Statement of Maria Figueras,* dated November 3, 2003. In addition, she holds a second position at a long-term care facility. This would seem to indicate that the applicant's spouse is a major contributor to the family's income and has skills which will enable her to continue to support herself. Furthermore, the applicant has also held a steady job in the United States and has acquired skills, which along with the experience and training assist him in securing employment that will allow him to continue to contribute to his wife's financial well-being, although at a reduced rate. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

The AAO turns next to the evidence of the emotional hardship to the applicant's spouse. 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 wife will endure hardship as a result of separation from the applicant. It is further noted that the applicant and his spouse continue to keep in touch despite the fact that they have been separated, and it is reasonable to assume that he will continue to provide her with emotional support. However, her situation if she 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. Although the spouse states that she is on the verge of a nervous breakdown, no objective evidence has been offered in support of this conclusory assertion. In terms of the spouse's claim that should her husband be unable to come to the United States, she would be forced to leave, the AAO notes

[2] Although the AAO is not unsympathetic to any difficulty the couple may have in making their house payments, it is worth noting that the couple assumed that financial obligation at a time when the applicant did not have legal status in the United States, and therefore, they assumed the risk that he would need to leave the United States and would be unable to contribute financially to the same degree as before.

that as a U.S. citizen, the applicant's spouse is free to remain in the United States and any decision to depart would be voluntary on her part.

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 he 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.