



U.S. Citizenship
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Services

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FILE:

Office: MANILA, PHILIPPINES

Date:

AUG 21 2007

IN RE:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

PHOTIC COPY

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the United States Citizenship and Immigration Services (USCIS) Officer-in-Charge (OIC), 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. 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 reside in the United States with her U.S. citizen spouse.

The record reflects that the applicant was admitted to the United States on a B-2 tourist visa on August 26, 1995. She concedes that she remained in the United States beyond the period of her authorized stay without seeking an extension of stay until voluntarily departing in October 6, 1998. The applicant and her husband, also a native of the Philippines, were married on May 4, 1996 in Nevada. The applicant's husband was issued an immigrant visa on April 6, 2005 as the married son of a U.S. citizen and now resides in the United States. The applicant filed an Application for Immigrant Visa (Form DS-230) with the U.S. Embassy in Manila on February 17, 2004. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 21, 2005.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated September 23, 2005.

On appeal, the applicant contends that the OIC did not consider the totality of circumstances in her case. The applicant asserts that her husband struggles to take care of the couple's two children by himself in the United States. She maintains that her husband's parents are unable to assist because they both work and because the applicant's mother-in-law is diabetic. The applicant asserts that the OIC's conclusion that neither she nor her husband face hardship in the Philippines is misplaced. She contends that the Philippines is now a fertile training ground for terrorism, a threat she claims did not exist when she and her husband were children there. The applicant also asserts that the OIC erred in dismissing her concerns about "the safety, economic and environmental conditions" in the Philippines.

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

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

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission

within 3 years of the date of such alien's departure of removal, or

(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 [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 record reflects that the applicant was admitted to the United States on a B-2 tourist visa on August 26, 1995. The applicant concedes that she remained in the United States after her period of authorized stay expired without seeking an extension of stay until voluntarily departing in October 6, 1998. Thus, the applicant accrued unlawful presence from April 1, 1997 through October 6, 1998, a period in excess of one year. The applicant subsequently departed and is now seeking re-admission. The applicant has not disputed that she was unlawfully present in the United States during the period in question and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen husband is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies 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 support of her waiver application, the applicant submitted a supplement in which she states that her husband needs her in the United States to take care of the couple's children so that he can work. She indicates that her husband and children live with his parents, but that they cannot care for the children because they both work and the applicant's mother-in-law is diabetic. The applicant also contends that her husband is "constantly worrying of my safety here in the Philippines because of the economic and environmental conditions, not to mention the random acts of violence" that occur in the country.

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 husband faces extreme hardship if she is refused admission.

The AAO recognizes that the applicant's husband suffers emotionally as a result of his separation from the applicant. However, there is no evidence showing that his suffering is atypical of individuals separated as a result of removal or inadmissibility, and it 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 removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

As stated above, the applicant has provided no evidence showing that her husband is suffering psychologically or emotionally beyond that which is typical of individuals separated as a result of

inadmissibility. Likewise, the applicant has submitted no specific evidence showing that her separation from her husband causes him financial hardship. The applicant asserts that it is difficult for her husband to work and care for the couple's young children, but she fails to provide specific evidence concerning her husband's employment status or any details regarding financial strain he may be experiencing. She states that her husband worries about her safety in the Philippines, and emphasizes the threat of terrorism in that country, but she does not indicate any specific threats to her safety and presents no additional evidence concerning general conditions in the Philippines. Finally, the applicant has failed to submit any specific evidence showing that her husband, a native and citizen of the Philippines, would suffer extreme hardship should he relocate to the Philippines.

While the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. *See Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests 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.