



U.S. Citizenship  
and Immigration  
Services

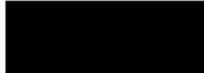
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FILE:



Office: MANILA, PHILIPPINES

Date: MAR 08 2007

IN RE:



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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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

The Officer-in-Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated June 28, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative if she were removed from the United States. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, receipts from psychotherapy sessions with Behavioral Psychology Associates; health insurance claim statements for psychotherapy sessions; statements from [REDACTED], Licensed Clinical Psychologist, dated January 25, 2005 and July 20, 2005; a letter from [REDACTED], Americas Medical Center, dated August 23, 2005; a statement from [REDACTED], dated July 20, 2005; a letter from [REDACTED], teacher, U.P. Ecumenical Ministry, dated July 18, 2005; letters from family members and friends; employment letters for the applicant's spouse, dated December 22, 2004 and July 22, 2005; a statement from the sister of the applicant's spouse, dated July 20, 2005; a statement from the mother of the applicant's spouse, dated July 16, 2005; statements from the applicant's spouse, dated March 21, 2005; bank account statements showing money transfers; a pension statement, energy, utility, and phone bills for the mother of the applicant's spouse; a statement from the applicant; a statement from the applicant's spouse; a mortgage statement for the applicant's spouse; and country condition reports. 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.

The record indicates that the applicant was admitted to the United States on February 20, 2000 with a B-2 visa valid until August 19, 2000. *Form I-94*. The applicant remained in the United States until October 22, 2004. *Form I-601*. The applicant accrued unlawful presence from August 20, 2000 until October 22, 2004, the date she departed the United States. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her October 2004 departure from the United States. Based on the record, the AAO concludes that 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 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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 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 family ties to 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 AAO notes that extreme hardship to a qualifying relative of the applicant must be established in the event that he resides in the Philippines or the United States, as he is not required to reside outside of the United

States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to the Philippines, the applicant needs to establish that her spouse would suffer extreme hardship. The applicant's spouse was born in Germany. *See birth certificate for the applicant's spouse.* Apart from the applicant and their daughter, the applicant's spouse does not have any family or friends in the Philippines. *Statement from the applicant*, dated April 4, 2005. The applicant's spouse does not speak the local Tagalog language used in the Philippines. *Id.* The applicant's spouse is also concerned that he would not be able to meet his financial obligations in the Philippines, as he is the sole financial provider for his family and provides for his mother in Germany. *Statement from the applicant*, dated March 21, 2005; *Statement from the mother of the applicant's spouse*, dated July 16, 2005; *See also bank account statements showing money transfers.* The applicant's spouse suffers from Major Depressive Disorder and has been receiving ongoing psychotherapy since November 2004, meeting with the same therapist several times a month. *Statement from [REDACTED], Licensed Clinical Psychologist*, dated July 20, 2005; *See Also numerous receipts from psychological therapy sessions with Behavioral Psychology Associates and health insurance claim statements for psychological therapy sessions.* The applicant's spouse's work with his psychologist has focused on preventing further escalation of his depressive symptoms. *Id.* According to his psychologist, it has become clear that the applicant's spouse's psychological well-being could further debilitate should his psychotherapy be discontinued at this time. *Id.* Therefore, the prospect of the applicant's spouse moving to the Philippines is highly contradicted therapeutically. *Id.* The inevitable culture shock, unemployment, and discontinuation of treatment with a psychotherapist of whom he has a "therapeutic alliance" with, would likely exacerbate the applicant's spouse's current psychological condition. *Id.* When looking at the aforementioned factors, particularly the lack of cultural ties to the Philippines, the language barriers, and the health conditions of the applicant's spouse, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse would suffer extreme hardship. The applicant's spouse has been under the care of a medical doctor since July 2003 who asserts that the applicant's spouse has deteriorated emotionally due to his separation from the applicant and their child. *Letter from [REDACTED], Americas Medical Center*, dated August 23, 2005. This emotional stress can cause numerous adverse conditions, including possible medical suicidal ideation. *Id.* Because of his condition, his doctor referred him to see a psychologist. *Id.* The applicant's spouse suffers from Major Depressive Disorder, Moderate Severity stemming from the separation from his spouse. *Statement from [REDACTED], Licensed Clinical Psychologist*, dated July 20, 2005. This disorder has manifested itself in a host of debilitating symptoms in the applicant's spouse including the loss of appetite, sleep disturbance, hopelessness, persistent sadness, and an inability to focus on daily responsibilities. *Id.*

Overall, the symptoms of the applicant's spouse are clearly in excess of typical Adjustment Disorder symptoms encountered during similar relationship separations. *Statement from [REDACTED], Licensed Clinical Psychologist*, dated July 20, 2005. In an attempt to gain relief from his depression, the applicant's spouse started psychotherapy in November 2004 and has since continued such treatment, meeting with the same therapist several times a month. *Id.*; *See Also numerous receipts from psychological therapy sessions with Behavioral Psychology Associates and health insurance claims statements for psychological*

*therapy sessions.* Any form of ongoing separation between the applicant's spouse and his family is likely to perpetuate and intensify already significant depressive and anxiety symptoms. *Statement from [REDACTED] Licensed Clinical Psychologist,* dated January 25, 2005. The extreme and unusual nature of the emotional suffering of the applicant's spouse could lead to hospitalization or death. *Id.*

The employer of the applicant's spouse has observed that the applicant's spouse, after more than seven years as an outstanding employee, is struggling to maintain normal working hours, is having trouble staying focused on specific tasks resulting in project delays, and is avoiding social interaction as evidenced by the fact that he rarely has lunch with his coworkers which was not the case in the past. *Letter from [REDACTED] Director of Engineering, UTStarcom,* dated July 22, 2005. In December 2004, the manager of the applicant's spouse expressed concern that his situation had adversely affected his ability to perform at the level his manager had been accustomed to over the years. *Letter from [REDACTED] Test Engineering Manager, UTStarcom,* dated December 22, 2004. His manager noted that while his performance at that time remained above what was to be expected, he feared that the trend would lead to decreased performance, over time falling below what was to be expected of the applicant's spouse's title and compensation. *Id.* In July 2005, the Director of the applicant's spouse stated that over the past six months, and most notably within the past month, the performance of the applicant's spouse has declined to the point where he is no longer performing to expectations and is at risk of being disciplined leading to termination. *Letter from [REDACTED] Director of Engineering, UTStarcom,* dated July 22, 2005.

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). 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. While the AAO acknowledges these cases, it notes that the situation of the applicant's spouse is not typical due to the significant deterioration in his mental health. Based on all of the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior unlawful presence for which she now seeks a waiver. The favorable and mitigating factors are the extreme hardship to her spouse if she were refused admission, her supportive relationship with her spouse and child, and her lack of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.