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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: MANILA, PHILIPPINES Date: JUL 29 2004

IN RE: Applicant: [redacted]

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

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 Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by knowingly and willfully misrepresenting a material fact. In addition the Officer in Charge found the applicant inadmissible 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 a period of one year or more. The applicant is the beneficiary of an approved Application for Action on an Approved Application or Petition (Form I-824). He now seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to the United States and reside with his Lawful Permanent Resident (LPR) spouse and children.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relative and denied the application accordingly. *See Officer in Charge's Decision* dated July 30, 2003.

The AAO finds that the Officer in Charge erred in finding the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The date of enactment of the unlawful presence provisions under the Act is April 1, 1997. The record of proceedings reflects that the applicant departed the United States on May 27, 1996, eleven months prior to the date of unlawful presence provisions under the Act. Therefore the applicant is not inadmissible to the United States under section 212(a)(9)(B) of the Act for being unlawfully present in the United States.

The AAO finds the error to be harmless since the applicant is clearly inadmissible under section 212(a)(6)(C)(i) of the Act, for having procured admission into the United States by knowingly and willfully misrepresenting a material fact.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that the applicant applied for and received a Philippine passport in a fictious name and presented that passport at the American Consulate in Manila, Philippines in order to apply for a nonimmigrant visa. The applicant was issued a nonimmigrant visa and on May 23, 1985, he presented the passport at the Los Angeles International Airport. The applicant was admitted as a nonimmigrant visitor for pleasure and remained in the United States beyond his authorized stay. The applicant also purchased a social security card for $300 and used this document to obtain employment without authorization. This act, however, does not render him inadmissible.

On September 4, 1987, the applicant was ordered deported on or before September 25, 1987. The immigration judge denied voluntary departure, and the applicant appealed this decision to the Board of Immigration Appeals (Board). On August 16, 1991, the Board dismissed the appeal. The applicant failed to surrender for deportation and self deported himself on May 27, 1996, when he departed the United States to the Philippines.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In the present case, the applicant must demonstrate extreme hardship to his LPR spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed 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.

On appeal the applicant states that he regrets that he used a passport under another name and he asks to be given another chance in order to be reunited with his family in the United States. In addition, the applicant states that his spouse (Ms. suffers from hypertension and episodes of headaches and that she has been to the emergency room because of her medical situation. The record reflects that Ms. receives medication for her condition however no evidence was provided to substantiate the claim that she cannot take care of herself and her daily chores. There is no independent corroboration to show that Ms. current medical conditions would be jeopardized if the waiver application is denied and the applicant is not permitted to travel to the United States. In the present case the record reflects that M s a native of

the Philippines and that she met and married the applicant for the first time in the Philippines a is bilingual and no reason was provided as to why she would not be able to adjust to life in the Philippines and obtain gainful employment if she decides to relocate with the applicant in the Philippines.

Furthermore the applicant states that his spouse would suffer financially if he were not permitted to travel to the United States because she must provide for herself and her three children. The assertion of financial hardship to the applicant's spouse is contradicted by tax documents which indicate that a is employed with an annual income over $87,000, a salary well above the poverty guidelines for a family of four. No evidence has been provided to substantiate the claim that the applicant's financial contribution is critical to s lifestyle or well-being.

The applicant further states that his U.S. citizen child would suffer hardship if the waiver application is denied and he is not permitted to travel to the United States.

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The assertions regarding the hardship the applicant's child would suffer will thus not be considered.

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 (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 U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his LPR spouse would suffer extreme hardship if he were not permitted to travel to 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(i) 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.