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U.S. Citizenship and Immigration Services

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JAN 3 2005

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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: On September 2, 2003 the waiver application was denied by the Acting District Director, San Francisco, California. 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 § 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 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 remain in the United States with his wife.

The district director had originally denied the Application for Adjustment of Status on March 12, 2002 upon determining that the applicant had entered the United States as a stowaway. On April 4, 2002, CIS moved to reopen the case, apparently finding that the applicant had not entered the United States as a stowaway, but simply without inspection. On May 30, 2003, CIS notified the applicant that he was inadmissible pursuant to § 212(a)(6)(C) of the Act as an alien who, by fraud or willfully misrepresenting a material fact, sought to procure a benefit under the Act. At that time, CIS informed the applicant that he was eligible to apply for a waiver of this ground of inadmissibility per § 212(i) of the Act. On July 3, 2003, the applicant submitted a Form I-601 Application for Waiver of Grounds of Inadmissibility.

On September 2, 2003 the acting district director notified the applicant that he had been found to be inadmissible pursuant to § 212(a)(9)(B)(i)(II), for having been unlawfully present in the United States and applying for readmission within 10 years of his departure. The acting district director informed the applicant that he had failed to establish extreme hardship to his U.S. citizen spouse, as required by the waiver provisions under § 212(a)(9)(B)(v). The waiver application was denied accordingly.

On appeal, the applicant writes that his wife is suffering emotionally due to his inadmissibility. He also writes that if he is removed to the Philippines, his wife will suffer financial hardship. The applicant's wife writes that if the applicant is removed, she will not be able to work, as she needs the applicant to drive her to work, because she is too nervous to drive on the freeway. She also notes that she will suffer financially without the applicant. In support of these assertions, the applicant submits evidence such as copies of his and his wife's pharmaceutical prescriptions, and a letter from [redacted] Ph.D., a psychologist. The applicant and his wife do not contend on appeal that his wife would suffer extreme hardship if she accompanies him to the Philippines, which is also her birthplace.

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-
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> . . . .

> (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.
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> . . . .
>
> (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 application, the record indicates that the applicant entered the United States on or about July 1, 1994 as a stowaway. The evidence indicates that the applicant departed the United States and was readmitted pursuant to an advance parole document on February 17, 2003. On April 17, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under § 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 17, 2001, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his February 2003 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 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 § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 § 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 deems relevant in determining whether an alien has established extreme hardship pursuant to § 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.

As noted above, the applicant does not assert that his wife would face extreme hardship if she relocates to the Philippines in order to remain with the applicant. Moreover, the record does not establish extreme hardship to the applicant's spouse if she remains in the United States. The AAO recognizes that this situation presents the applicant's wife with difficult choices, but she would not be required to reside outside of the United States as a result of denial of the applicant's waiver request.

The applicant states that his spouse would experience financial hardship as a result of his removal. The record reflects that the applicant's spouse earns an income and contributes to the family's financial expenditures. Although the record contains several bills indicating that accounts in the name of the applicant and his spouse are outstanding, the record fails to establish that the applicant's spouse is unable to address these financial responsibilities with her earnings. The evidence fails to establish that the applicant's and his wife's financial obligations are nondiscretionary or unalterable. The AAO notes that 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).

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. 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.

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.