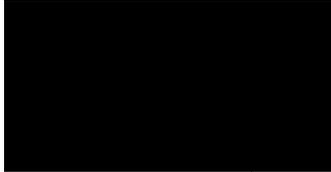




U.S. Citizenship
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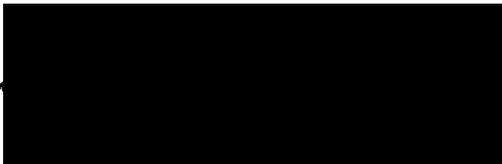
IN RE:



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:



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 Interim District Director, Los Angeles, California, 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)(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 fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the son of a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The interim district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated September 17, 2003.

On appeal, counsel asserts that the applicant is eligible for a section 212(i) waiver, the interim district director abused her discretion by performing a cursory examination of the facts and evidence and erroneously applied relevant law, the applicant's spouse and mother would suffer extreme hardship and the applicant is eligible for a favorable exercise of discretion. *Brief in Support of Appeal*, dated November 13, 2003.

The record includes, but is not limited to, counsel's brief, medical documents for the applicant's spouse, insurance documents for the applicant's spouse, medical bills for the applicant's spouse, evidence of the applicant's unemployment and information on country conditions in the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was admitted to the United States on June 14, 1982 using a passport with an assumed name. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel asserts that the interim district director abused her discretion by performing a cursory examination of the facts and evidence and she erroneously applied relevant law. *Decision of the Interim District Director*, at 1. The AAO notes that the interim district director's decision addressed the relevant facts submitted with the waiver application including family, financial and medical issues.

Counsel contends that it is inappropriate to apply the definition of extreme hardship as used in suspension of deportation cases in the fraud waiver context. See *Brief in Support of Appeal*, at 26. The AAO finds counsel's contention to be unpersuasive, as the Board of Immigration Appeals (BIA) has cited suspension of deportation cases in the fraud waiver context. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999)

The AAO notes, however, that the interim district director failed to cite *Matter of Cervantes-Gonzalez*, the precedent case used in determining extreme hardship. Therefore, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate for this decision.

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 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 the applicant's spouse or mother must be established in the event that they reside in the Philippines or in the event that they reside in the United States, as they are not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse or mother in the event that they reside in the Philippines. Counsel states that the applicant's mother has six children, ten grandchildren and ten great-grandchildren. *Brief in Support of Appeal*, at 12. The record does not indicate the legal status for all of these relatives. The applicant's spouse states that all of her siblings, nieces, nephews and mother live in California. *Statement of Applicant's Spouse*, at 4, dated May 30, 2003. Counsel asserts that the applicant's spouse is unable to have children due to a hysterectomy and the applicant is the only person that can be her friend and family. *Brief in Support of Appeal*, at 9. However, this statement contradicts the applicant's spouse's statement regarding her family ties in the United States. The record indicates that the applicant's spouse does not have any family, social or professional ties to the Philippines as she has been in the United States for over thirty years. *Id.* at 10. The record is not clear as to whether the applicant's mother has any family or other ties to the Philippines.

In regard to country conditions, the record includes a Department of State Public Announcement on the Philippines which details security concerns due to terrorist threats. *Department of State Public Announcement*, dated July 16, 2003. The AAO notes that the public announcement focuses on specific areas of the Philippines which are dangerous, however, there is no indication that the applicant's spouse or mother would be residing in these areas.

In regard to the financial impact of departure, counsel states that the applicant had a technology-related position in the United States which he recently lost and will most likely be unable to obtain a similar job in the Philippines. *Brief in Support of Appeal*, at 6-7. Counsel states that the applicant's spouse is a licensed vocational nurse and it will be especially difficult for her to obtain a similar job in the Philippines, as she is less than a registered nurse. *Id.* at 7. However, there is no evidence to support the assertions that the applicant and his spouse cannot obtain employment in the Philippines. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In regard to significant conditions of health, counsel states that the applicant's spouse has several medical problems including carpal tunnel syndrome, migraine headaches, hyperactive bowel syndrome and non-alcoholic liver disease and would be unable to obtain adequate medical care and coverage in the Philippines. *Id.* at 8. Counsel states that the applicant's mother has uncontrolled diabetes and high blood pressure and she depends on medical insurance to provide her with required medication. *Id.* at 11. The AAO notes the vast medical-related information submitted by counsel, however, there is no evidence that they could not obtain medical treatment in the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse or mother remains in the United States. Counsel states that the applicant's spouse needs to be with the applicant due to her poor health. *Id.* at 10. Counsel states that the applicant's mother is not certain how often she would be able to visit the applicant based on her age. *Id.* The AAO notes that separation has inherent emotional and logistical problems associated with it. No other contentions are made regarding this situation.

Therefore, the record does not evidence extreme hardship to a qualifying relative in the event of relocation to the Philippines or in the event of remaining in the United States without the applicant.

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.

Moreover, the AAO notes that the U.S. Supreme Court 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. The AAO recognizes that the qualifying relatives will endure hardship as a

result of separation from the applicant and is sympathetic to their situation. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the qualifying relatives 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(i) 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.