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MAY 08 2007

FILE: [redacted] Office: SANTA ANA (LOS ANGELES, CA) Date:

IN RE: [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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter 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 who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport and visa under a different name. The record indicates that the applicant's spouse is a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 with her United States citizen husband.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's United States citizen spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated October 7, 2005.

On appeal, the applicant, through counsel, states that her husband is suffering from a medical condition and the denial of her admission into the United States would result in extreme hardship to him. *Form I-290B*, filed November 8, 2005.

The record includes, but is not limited to, counsel's brief, statements from the applicant's husband, and various medical reports for the applicant's husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (i) In general.-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.
>
> ...
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (i) (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 immigrant 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...

In the present application, the record indicates that on September 28, 1995, the applicant entered the United States on a B1/B2 nonimmigrant visa and a passport under the name of '[redacted] On December 24, 2000, the applicant gave birth to her daughter, [redacted] On May 28, 2003, the applicant married Mr [redacted] a naturalized United States citizen. On August 16, 2004, the applicant filed a Form I-130 and an Application to Register Permanent Resident or Adjust Status (Form I-485). On May 12, 2005, the applicant filed a Form I-601. On October 7, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her United States citizen spouse. On November 17, 2005, the District Director denied the applicant's Form I-485; however, she reopened the Form I-485 on December 7, 2005.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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 *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's husband would face extreme hardship if the applicant were not allowed to enter the United States. The applicant's husband states he is suffering from "severe depression due to [his] loneliness, sleepless nights, [and] anxiety." *Declaration of* [redacted] dated May 3, 2005. On November 2, 2005, Dr. [redacted] diagnosed the applicant's husband with mild depression and diabetes mellitus. *Prescription note from* [redacted] *M.D.*, dated November 2, 2005. The AAO notes that besides the prescription note by Dr. [redacted] there are no professional evaluations for the AAO to review to determine what personal issues are affecting the applicant's husband's emotional and psychological wellbeing. Counsel states the applicant's husband has "undergone several treatments for his diabetes including...the amputation of the little toe of his right foot." *Declaration of* [redacted], dated October 17, 2006. Dr. [redacted] states he has "been treating [the applicant's husband's] right foot infection. This requires intravenous antibiotics and frequent clinic visits. He is unable to work at this time, and his wife has been taking care of him while he recovers from his illness." *Letter from* [redacted] *M.D.*, dated August 2, 2006. Counsel submitted documentation establishing that the applicant's husband's little toe of his right foot was amputated on or about July 4, 2006. The AAO notes that the applicant has not established that her husband's medical condition has not gotten better or that he could not receive medical treatment for his

problems in the Philippines. The applicant's husband states he cannot join the applicant in the Philippines because all of his family ties are in the United States. *Declaration of* [redacted] *supra*. He claims it would be difficult to obtain employment in the Philippines "especially when [he does] not know their local dialect as well as their customs and traditions." *Id.* The AAO notes that the applicant failed to establish that her husband could not learn the local dialect, customs, and traditions in the Philippines. Additionally, the applicant's mother and three children, including her youngest United States citizen daughter, reside in the Philippines. The AAO finds that the applicant failed to establish extreme hardship to her spouse if he accompanies her to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's United States citizen spouse if he remains in the United States, with access to adequate health care for his diabetes and in close proximity to his family. Counsel and Dr. [redacted] state the applicant helps to care for her husband; however, it has not been established that the applicant's husband's family and children could not help take care of him. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. No documentation was submitted establishing that the applicant's husband will experience a major financial hardship as a result of the separation from the applicant. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States 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).

Although the AAO is not insensitive to the applicant's situation, the emotional hardship of separation is a common result of separation and does not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.