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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: JUN 13 2005

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:

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 Acting Immigration Attache, Manila, Philippines. 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 her 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 reside in the United States with her husband.

The acting immigration attache 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. On appeal, the applicant asserts that her husband suffers from rheumatism and allergies, and that he cannot walk by himself. The applicant states that she comforts her husband. The record, however, contains no evidence regarding the applicant's husband's medical condition. The entire record was reviewed and considered in rendering a decision on the appeal, and the AAO concurs with the decision of the acting immigration attache.

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.

In the present application, the record indicates that the applicant entered the United States on a fiancee visa on or about May 24, 1997. According to the record, the applicant did not marry the petitioner of that fiancee

visa, but married a different individual, her current husband, on October 10, 1997 in Hawaii. On December 16, 1997, the applicant's husband filed a petition for alien relative on behalf of the applicant. The petition was approved. According to information on the record, the applicant was placed into immigration proceedings on April 12, 1999, and the immigration judge (IJ) granted her voluntary departure on December 6, 1999. The applicant departed voluntarily pursuant to that order. The applicant thus accrued unlawful presence from the date her nonimmigrant status expired, presumably on or about August 24, 1997, until December 16, 1999, the date the IJ issued the voluntary departure order. The applicant now seeks admission within 10 years of her January, 2000 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act.

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.

In her statement submitted with the waiver application, the applicant asserted that her husband would suffer financial and emotional hardship without her. She wrote that her husband expected to retire soon, and that his pension would not sufficiently cover his expenses. The applicant indicated that she would have to work to contribute to her husband's financial welfare. On appeal, the applicant contends that her husband requires her presence due to his illness. She states that he suffers from rheumatism so serious that he cannot walk on his own. She also mentions that he suffers from allergies.

The record does not include any documentation regarding the applicant's husband's medical condition or financial status. There is no evidence that his own income is insufficient for his needs, or that the applicant is unable to contribute to her husband's support while she is in the Philippines. Moreover, there is no evidence that the applicant suffers from any medical problem or that he requires the applicant's presence for his physical wellbeing. The AAO recognizes that the applicant's husband suffers emotionally due to the separation from the applicant, but the record does not establish that his hardship goes beyond that which is usually experienced by similarly situated individuals.

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 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).

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 § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.