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U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: APR 23 2007

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Manila, the 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 ten 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 reside in the United States with his wife.

The acting officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the district director failed to take into account and analyze all of the hardship factors presented, which, according to counsel, overwhelmingly support a finding that the applicant's wife's suffering is extreme. The record includes a sworn statement written on May 4, 2005 by the applicant, a psychological evaluation of the applicant's wife rendered on June 1, 2005, and other documentation. Notably, the record is devoid of any statement by the applicant's wife herself. The entire record was reviewed and considered in rendering a decision on the appeal.

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 visitor visa on or June 7, 1996 with authorization to remain until August 6, 1996. According to the applicant's written statement and other documentation in the record, the applicant married his second wife, a U.S. citizen, on December 11, 1997 and filed a Form I-485 application to adjust status on February 18, 1998. He and his second wife divorced; hence, his I-485 application was denied on March 29, 1999. The applicant was placed in proceedings, and an order of voluntary departure was granted on November 15, 1999. The applicant married his third wife, another U.S. citizen, on July 14, 2000. As the applicant remained in the United States, his voluntary departure order expired and became a removal order on March 2, 2002. On June 4, 2002, the applicant was again granted voluntary departure, pursuant to which he departed the United States on June 24, 2002.

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 section 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 February 18, 1998, the date of his proper filing of the Form I-485. He again accrued unlawful presence from the date his I-485 was denied, on March 29, 1999, until the November 15, 1999 grant of voluntary departure. His unlawful presence thus amounts to a period greater than 365 days. The applicant now seeks admission within 10 years of his June 2002 departure from the United States, and he 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 following removal is not considered in § 212(a)(9)(B)(v) waiver proceedings, except as it may affect the qualifying relative. 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 the present matter, the qualifying relative is the applicant's spouse. As she is not required to reside outside the United States based on the denial of the applicant's waiver request, the applicant must establish that his spouse would experience extreme hardship whether she remains in the United States or relocates to the Philippines.

In his appeal brief, counsel characterizes the applicant's wife's suffering as "extraordinarily severe" and "life threatening," citing passages from the June 1, 2005 psychological evaluation performed by [redacted] based his evaluation on a single, two-hour interview with the applicant's wife, and the record contains no other medical or psychiatric documentation regarding her health status prior to or subsequent to the evaluation. Dr. [redacted] writes that the applicant's wife described symptoms such as nervousness, loss of appetite, insomnia, and two apparent anxiety attacks that sent her to the emergency room on unknown dates. She also experienced loneliness due to the applicant's and her son's departures. (Her son apparently left for Naval duty.) Dr. [redacted] noted that the applicant's wife also reported that she had refused prescription medication for anxiety and insomnia. Dr. [redacted] concluded that the applicant's removal had caused the applicant's wife emotional trauma, for which he referred her to a psychiatrist for psychotherapy and possible medication.

Although the input of any mental health professional is respected and valuable, the AAO finds the evaluation submitted by Dr. [redacted] to be of diminished evidentiary value, as it is based on a single interview with the applicant's spouse and unsupported by any other documentation related to the depression and anxiety that counsel contends is being experienced by the applicant's wife. Absent an ongoing relationship between Dr. [redacted] and the applicant's wife or proof of her self-reported symptoms, the AAO finds the evaluation's findings to be speculative, undermining its value to a determination of extreme hardship. Accordingly, there is no information in the record that establishes that the applicant's wife's emotional suffering is beyond that which is the unfortunate, but common, result of the removal of a spouse. In addition, the documentation on the record does not demonstrate that if she remains in the United States, the applicant's wife would be unable to function or to carry out her daily activities, such as working and caring for herself.

The AAO notes that there is no documentation on the record to establish that the applicant's spouse is suffering extreme financial hardship on account of the applicant's absence. At the time of filing, counsel specifically noted that the applicant's spouse is able to support herself financially in the United States, although she could use financial help from her husband.

The record also fails to demonstrate that the applicant's spouse would face extreme financial hardship if she returned to the Philippines in order to remain with the applicant. Neither the applicant nor counsel assert that the applicant's spouse would be unable to find employment in the Philippines. Further, a review of the record finds no basis to conclude that relocation to the Philippines would constitute an emotional hardship for the applicant's spouse. At filing, counsel stated that the applicant's spouse had few family members in the United States, that most of her family lived in the Philippines. The record reflects that the applicant's wife's siblings live in the Philippines, as do the applicant's parents. In sum, the evidence of record does not establish that the applicant's wife would face hardship different from that experienced by many individuals separated as a result of removal. Accordingly, the applicant has not established that his wife's distress and the disruptions resulting from his removal rise to the level of extreme hardship.

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 he 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.