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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MANILA, PHILIPPINES Date: NOV 09 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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: The waiver application was denied by the Acting Immigration Attaché, 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 section 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 U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting immigration attaché 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. *Decision of the Acting Immigration Attaché,* dated March 4, 2004.

On appeal, the applicant asserts that he has established extreme hardship to his U.S. citizen spouse and the acting immigration attaché did not consider all of the qualifying factors and submitted evidence. *Brief in Support of Appeal*, undated.

The record includes the applicant's brief, statements from the applicant and his spouse, a psychological evaluation and doctor's notes for the applicant's spouse, support letters for the applicant and employment letters for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States on a visitor visa on December 24, 1991 and did not maintain lawful status. The applicant departed the United States sometime in April 1998. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 1998, the date of departure from the United States. The AAO notes that there is no physical proof of the date of the applicant's departure from the United States, however, the applicant stated in his I-601 supplement that he departed in April 1998. The burden of proof is on the applicant to provide evidence of departure. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 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. 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 section 212(i) of the Act. These factors are relevant in section 212(a)(9)(B)(v) waiver proceedings and include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to the Philippines or in the event that she remains in the United States as she is 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 show extreme hardship to his spouse in the event of relocation to the Philippines. The applicant's spouse states that her whole family is in the United States. *Statement of Applicant's Spouse*, at 2, undated. There is no mention of their legal statuses. There is no mention of her ties to the Philippines, however, the applicant's spouse was born and apparently raised in the Philippines before coming to the United States. There is no indication that the applicant's spouse suffered extreme hardship when she resided in the Philippines previously. Furthermore, the record does not include any information on the conditions in the Philippines other than general statements by the applicant and his spouse regarding the lack of opportunity and lower standard of living in the Philippines.

In regard to the financial impact of departure, the applicant states that the unemployment rate in the Philippines is high and that any employment they find would have a small income. *See id.* at 3. However, these statements are not substantiated by supporting documentation.

In regard to significant conditions of health, the record includes an evaluation which states that the applicant's spouse meets the criteria for Separation Anxiety Disorder and Major Depressive Disorder. *Letter from Social Worker*, at 8-9, dated December 6, 2003. The AAO notes that this is a one-time evaluation with no mention of a plan of treatment for the applicant's spouse. The record includes her physician's notes stating that the applicant's spouse is having chronic headaches and stomach problems due to stress. *Doctor's Notes*, dated November 5, 2003. The record also includes a prescription, however, it is not clear if the prescribed medication has cured the problems. The applicant does not address the unavailability of suitable medical care in the Philippines should his spouse relocate.

The second part of the analysis requires the applicant to prove extreme hardship in the event that his spouse remains in the United States. By remaining in the United States, the applicant's spouse would be able to maintain contact with her family. In regard to proposed financial hardship, the employer of the applicant's spouse states that she is preoccupied with the immigration status of the applicant and she has been granted leave due to extreme distress and anxiety. *Employer Letter*, dated December 5, 2003. The record also includes a notice of excessive absenteeism, which states that due to absences related to personal problems, the applicant's spouse could be terminated. *Absentee Notice*, dated November 20, 2003. However, the record reflects that the applicant's spouse is still employed. Also, there is no indication that she cannot obtain an alternate work schedule or employment with more vacation time. The applicant states that his spouse's income has decreased and she will be unable to afford her nursing education due to her emotional and physical condition. *Brief in Support of Appeal*, at 2. The applicant states that his spouse is considering canceling her medical coverage due to lack of income. *Id.* However, these statements are not substantiated by supporting documentation. In regard to the previously discussed issues of health, the applicant's spouse would have access to relevant medical care if required.

After a thorough review of the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse relocates to the Philippines or in the event that she remains in the United States maintaining her employment.

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 spouse 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.