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U.S. Citizenship
and Immigration
Services

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FILE:  Office: SAN FRANCISCO, CALIFORNIA

Date: MAR 23 2005

IN RE: 

APPLICATION: Application for waiver of Grounds of Inadmissibility under § 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 Acting District Director, San Francisco, 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 under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had 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. On appeal, counsel states that the Immigration and Naturalization Service (Service), now known as Citizenship and Immigration Services (CIS), abused its discretion by failing to thoroughly analyze some of the facts and evidence in the case, and in incorrectly analyzing other facts. In support of counsel's claim that the cumulative effect of all of the applicant's husband's circumstances would amount to extreme hardship, counsel resubmits documentation already found on the record. The entire record was reviewed and considered in rendering this decision.

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 record reflects that the applicant made a willful misrepresentation of a material fact by utilizing a passport in another person's name in order to obtain entry into the United States on or about December 17, 1996. A § 212(i) waiver of the bar to admission resulting from violation of § 212(a)(6)(C) 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 deportation is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines to remain with the applicant, as he has lived in the United States for 27 years, and all his relatives reside in this country. The applicant's husband indicated in his statement that it would be difficult for him to readjust to life in the Philippines, and he would not be able to earn enough money there to take care of his family. Counsel points out that the applicant's husband also suffers from health problems, and medical care in the Philippines is not of the same quality as that which is available here. The applicant's husband indicated that he would not have health insurance to cover his medical needs in the Philippines. The record, however, does not contain evidence in support of these assertions regarding the applicant's financial potential or health care possibilities in the Philippines.

Counsel also asserts that the applicant's husband works at two jobs in order to provide financial assistance to his parents, who are not in good health. The applicant's husband stated that he would suffer greatly if he left his parents in the United States to care for themselves. The evidence of his father's medical condition contained in the record, a letter from Lydia M. Seebach, M.D. dated September 24, 2003, merely states that the applicant's father-in-law has gout. A report dated July 20, 2000 by Dr. Eric G. Lim indicates that the applicant's mother-in-law underwent cardiac surgery in July 2000. The record does not contain evidence to establish that the applicant's parents-in-law require financial support or other care or that the applicant and her husband provide such care to his parents. Moreover, the record indicates that the applicant's husband's siblings and their children all live in the United States, and it is not demonstrated that they would be unavailable to assist the applicant's husband's parents in his absence. Therefore, the record does not support the contention that the applicant's husband's parents' situation is such that the applicant's husband's presence is necessary to their wellbeing. The record does not establish that the applicant's husband would suffer extreme hardship if he chooses to return to the Philippines.

The record does not establish extreme hardship to the applicant's spouse if he remains in the United States. The applicant's husband wrote that he would be forced to work extra hours if the applicant is removed, because the family would lose her part-time employment pay, but the record contains no evidence that this would be necessary. The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements and those of the parents of the applicant's spouse as a result of the applicant's inadmissibility. The record, however, does not establish that the applicant's spouse will be unable to maintain his financial situation if the applicant departs from the United States. Moreover, 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 applicant's husband also stated that, due to his long work hours, he would be unable to maintain his household without the applicant, because she cooks, cleans, and cares for him, and she cooks for his parents and does their laundry. It appears from the record that the applicant's grown daughter lives in the household, but it is not clear whether her parents-in-law also live there. The record does not establish that the applicant is the only individual who could assist the applicant's husband with his household chores.

The applicant's husband noted that he occasionally becomes incapacitated for 10 to 14 days at a time due to his gouty arthritis. He stated that during his arthritic flare-ups, he requires the applicant's presence to carry out his daily activities. The record does not indicate how often this happens; however, there is documentation that such episodes occurred once each year in 1999, 2001, and 2002. The documentation on the record does not establish that the applicant's husband requires her continuous presence due to his medical condition.

Counsel asserts that the acting district director misinterpreted a psychological report regarding the mental state of the applicant's spouse. Counsel contends that the applicant's husband would suffer extreme emotional hardship if the applicant is removed, referring to a report prepared by Lisa E. Wulkan, M.S.W., L.C.S.W. Ms. Wulkan interviewed the applicant's husband for an indeterminate length of time on July 5, 2003. The record does not indicate that Ms. Wulkan provided therapy to the applicant's husband prior to or subsequent to the date of their meeting. Ms. Wulkan reports information as recounted by the applicant's husband; for example, he told her that he was suffering from insomnia, difficulty concentrating, tenseness, anxiety, and depression. Counsel indicates that the applicant's husband has "suicidal tendencies;" however, Ms. Wulkan does not state this. Ms. Wulkan reports that the applicant's husband had "thoughts of putting himself and his life at risk (such as driving too fast) as a way of coping..." There is no evidence, however, that Ms. Wulkan recommended that the applicant's husband seek medical, psychiatric, or psychological therapy for his depressed mood. The psychological evaluation does not establish that the applicant's husband's mental state would be extraordinarily negative should the applicant be removed.

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation is not unusual in families separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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.

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)(6)(C) 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.