

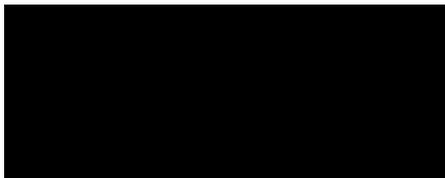
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U.S. Department of Homeland Security
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U.S. Citizenship
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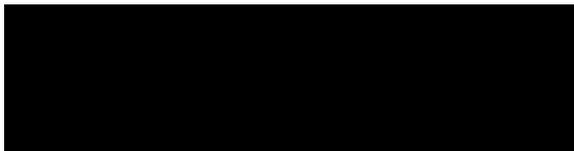
Office: MANILA PHILIPPINES

Date: SEP 29 2005

IN RE: 

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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, Manila, Philippines, 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 pursuant to section 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 a visa to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and 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 spouse who petitioned for her in this case.

The acting immigration attaché concluded that the applicant 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. *Decision of the Acting Immigration Attaché*, dated May 14, 2004.

On appeal, counsel asserts that the acting immigration attaché erred in relying on several cases in the decision and erred in considering the applicant's act of fraud in denying the waiver. *Brief in Support of Appeal*, dated August 15, 2003.

In support of these assertions, counsel submits a brief, letters and affidavits from the applicant, the applicant's spouse and family, photographs, evidence of monetary support from the parents of the applicant's spouse and tax returns for the applicant's spouse and his parents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant provided fraudulent documents while applying for a tourist visa in September 1998 and is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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.

Counsel asserts that the case law cited by the acting immigration attaché was erroneous as the cited cases dealt with criminal aliens, waivers under section 212(h) of the Act and lacked the issue of forced separation of

parent and minor child. *See Form I-290B*, at 1-2, undated. The AAO notes that the acting immigration attaché does not state that the applicant's situation is similar to the cited cases and therefore deniable, rather the acting immigration attaché is citing these cases due to the relevant legal language contained therein and then applies the applicant's facts to the relevant law. *See Decision of the Acting Immigration Attaché*. However, counsel is correct in citing *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) as the precedent case in extreme hardship analysis. *Brief in Support of Appeal*, at 7. *Matter of Cervantes-Gonzalez* 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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant, her child or her in-laws experience upon deportation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse; the only relevant hardship in the present case is that suffered by the applicant's 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).

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 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.

Counsel asserts that the applicant's spouse's mother, father, brother and sister reside in the United States. *Brief in Support of Appeal*, at 8. The record includes evidence that the mother, father, brother and sister are lawful permanent residents. Counsel states that most of the applicant's spouse's aunts, uncles and cousins live in the United States. *Id.* at 10. No evidence is provided to support this statement. Counsel states that the applicant's spouse does not have any family in the Philippines. *Id.* at 9. There is no other mention of the applicant's spouse having ties to the Philippines.

In regard to the financial impact of departure, counsel cites the World Bank Development Indicators which lists the 2002 average income in the Philippines as \$1030. *Id.* at 10-11. There is no indication of the average income in the Philippines for nurses, the occupation of the applicant's spouse. Counsel states that when the applicant's spouse stayed in the Philippines previously, he was unable to find work and relied on his parents to provide him financial support. *Id.* at 11. There is no indication regarding the nature of the applicant's spouse's employment search in the Philippines. Counsel submits the 2003 tax return for the applicant's spouse that shows a nominal income, however, the applicant's spouse was not residing in the United States for most of that year. Counsel states that the applicant works as a nurse, however, her salary is not mentioned. Counsel contends that the parents of the applicant's spouse cannot support two households and pay for their daughter's college tuition. *Id.* The AAO notes that the parents of the applicant's spouse are not

qualifying relatives and there is no evidence that their hardship will result in hardship to the applicant's spouse.

Counsel states that there are no significant health issues. *Id.* at 12.

After a thorough review of the record, the AAO finds that the applicant's spouse will not face extreme hardship if he relocates to the Philippines or remains in the United States maintaining his employment. The AAO notes that as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

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 AAO notes that 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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to his situation. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that 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. The AAO notes, however, that the nature of the applicant's ground of inadmissibility is an adverse factor in the Secretary's exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

In proceedings for application for waiver of grounds of inadmissibility under section 212(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.