

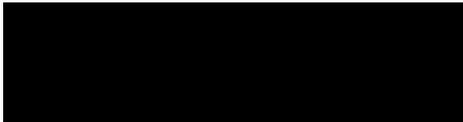
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: SAN FRANCISCO, CA

Date: **AUG 15 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a United States 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 his spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated May 25, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of fact and law in finding that the applicant was inadmissible and that he failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated June 24, 2004.*

In support of these assertions, counsel submits a brief dated July 28, 2004. The record also includes medical records for the applicant, Daly City Medical Offices, written [REDACTED], dated January 22, 2004; a California all-purpose acknowledgement notice, dated July 20, 2004; affidavit of the applicant's spouse, dated October 6, 2003; affidavit of the applicant, dated October 6, 2003; credit card and bank statements for the applicant and his spouse; Record of Sworn Statement, dated July 7, 2003; criminal court records for the applicant, dated April 12, 2002, May 30, 2002, July 11, 2002, October 17, 2002, and July 15, 2003; notice of completion certificate, California Department of Motor Vehicles, dated October 17, 2002; marriage certificate, dated March 31, 2001; joint affidavit of birth facts for the applicant, dated April 2001; certification of lost birth certificate for the applicant, dated September 1, 1988; Philippine passport of the applicant; employment letter on behalf of the applicant, dated June 30, 2003; tax statements for the applicant and his spouse; U.S. passport for the applicant's spouse; death certificate of the applicant's spouse's first husband, issued July 22, 1999; and a divorce certificate for the applicant, dated November 16, 1999. 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 admitted in a Record of Sworn Statement to obtaining a Philippine passport under an alias name through a travel agency in the Philippines. The applicant used this passport to enter the United States on May 31, 1987. *Record of Sworn Statement, dated July 7, 2003*. The AAO acknowledges counsel's assertion that the applicant's use of an alias name is not a *material* misrepresentation (emphasis added), as the applicant had obtained his passport and visa through a Philippine travel agency and did not authorize the use of an alias name. *Attorney's brief, p.2*. Counsel states that there is nothing in the record to suggest that the applicant was ever denied a visa prior to his obtaining the visa in question, and there is no reason to believe that a mere use of an alias name by the applicant would have led to a denial of his visa. *Attorney's brief, p.8*. Counsel further states that it would be unreasonable and improper for the Service to make unsupported adverse inferences that the alleged fraud was a material misrepresentation. *Id.* The AAO finds that counsel's analysis is incorrect.

The determination of materiality is a fact which would make the alien excludable or shut off a line of inquiry which may have resulted in exclusion. *Matter of S-& B-C-*, 9 I&N Dec. 436 (BIA 1960). The applicant misrepresented his identity to immigration officials in order to procure the benefit of entry to the United States. In such an instance, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to him, and whether any United States government agency possesses information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented his identity, he cut off these material inquiries. Specifically, the inspecting officer was unable to determine whether the applicant was the true owner of the passport and visa, whether he possessed valid entry documents of his own, or whether the United States possessed information that has a bearing on the applicant's eligibility for entry.

Counsel suggests that the applicant's misrepresentation was not material if he would have been eligible for a visa had he applied. *Attorney's brief, p.8-10*. Yet, whether the applicant would have been issued a visa through legal means is not relevant to determining whether his misrepresentation was material under the present facts. The applicant made a willful misrepresentation in order to gain admission to the United States, not to gain a visa. Had he revealed his true identity to the inspecting officer, he would have been refused admission due to his lack of valid entry documents. Thus, the applicant misrepresented his identity to gain a benefit under the Act for which he was not eligible, and such misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) 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 the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings. The only relevant hardship in the present case is hardship suffered by the applicant's wife. 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 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 a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Philippines or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Philippines. All of the applicant's spouse's immediate family members reside in the United States, and the applicant's spouse has resided in the United States for over 30 years. *Attorney's Brief*, p. 20. The applicant's spouse suffers from high blood pressure. *Affidavit of the applicant's spouse, dated October 6, 2003*. If returned to the Philippines, she believes she would risk her health because she could not afford to pay for medical treatment in the Philippines without health insurance. *Id.* According to the applicant's spouse, medical treatment in the Philippines is not as good as in the United States, and medications are very expensive there. *Id.* While the AAO acknowledges the inconvenience of having high blood pressure, it notes that the applicant's spouse's health condition is non-life threatening and she is still able to work and function. There is nothing in the record that shows the applicant or his spouse would be unable to contribute to their family's financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the United States. The applicant's spouse states that her first husband died, and she would be devastated if she were to lose the applicant. *Affidavit of the applicant's spouse, dated October 6, 2003*; *See Also Death Certificate of the applicant's first husband, issued July 22, 1999*. The applicant is her best friend and constant companion. *Id.* 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 of individuals separated as a result of removal and does not rise to the level of extreme hardship. The

applicant's spouse works at the Bank of America, while the applicant works at Comstock Apartment Corporation. *Affidavit of the applicant's spouse, dated October 6, 2003*. The applicant's spouse would be financially impacted if the applicant departed the United States. The applicant's spouse would likely lose her home if the applicant did not equally share the mortgage and other household expenses with her. *Id.* The applicant has Type II Diabetes for which he receives regular medication. *Id.*; *See Also medical records for the applicant, Daly City Medical Offices, written by S H Mah, M.D., dated January 22, 2004*. Neither the applicant nor his spouse would be able to afford medical treatment in the Philippines. *Affidavit of the applicant's spouse, dated October 6, 2003*. The AAO acknowledges that the applicant's diabetic health condition is significant; however, hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings. Although the applicant has a significant health condition, he is still able to work and function. As previously stated, there is nothing in the record that shows the applicant would be unable to contribute to his spouse's and his own financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the Philippines.

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)(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.