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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO DISTRICT OFFICE

Date: **JUL 13 2006**

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] (Mrs. [REDACTED]) 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 (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. Mrs. [REDACTED] seeks a waiver of inadmissibility pursuant to section 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, Dale [REDACTED] Mr. [REDACTED] and U.S. citizen child, who was born in September 2001.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 15, 2002.

On appeal, counsel for the applicant stated that the District Director erred in concluding that the applicant made two false statements because Mrs. [REDACTED] never requested a visa in Manila or made any false statement to consular officials in Manila. *Form I-290B*, dated November 14, 2002. The AAO agrees that there is no evidence in the record that Mrs. [REDACTED] made a false statement to consular officials in Manila and that she did not, therefore, make two false statements, but that she did, by her own admission, obtain a false passport and visa in Manila which she used to enter the United States. *See Form I-601 and attached statement by the applicant.* Counsel for Mrs. [REDACTED] also stated on appeal that an incorrect legal standard was used in determining hardship, and that the District Director failed to provide reasons for his discretionary denial of Mrs. [REDACTED] waiver application. The record contains statements from the applicant and her husband and relatives and friends, noting the emotional and financial difficulties the family would suffer if Mrs. [REDACTED] were forced to return to the Philippines. The record also contains a summary of the family's income and expenses and employment statements and tax records for 1998 through 2001, showing that Mr. [REDACTED] is the sole support of the family and that his income barely covers expenses. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(i) of the Act provides:

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

Regarding the District Director's finding that the applicant is inadmissible, the record reflects that Mrs. [REDACTED] admitted obtaining a false passport and visa in Manila and using them to enter the United States in April 1997 at New York City. The applicant, therefore, fraudulently procured admission to the United States. The District Director accordingly correctly determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute and is irrelevant to section 212(i) waiver proceedings. In this case, Mrs. [REDACTED] does not claim that either of her parents are U.S. citizens or lawful residents; therefore, Mr. [REDACTED] the applicant's U.S. citizen spouse is the only qualifying relative. Their U.S. citizen daughter is not a qualifying relative under the Act. Hardship suffered by their daughter will be considered only insofar as it results in hardship to the qualifying relative, Mr. [REDACTED]. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative, in this case the U.S. citizen husband of the applicant, pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

"Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In this case, the record reflects that the applicant was born in the Philippines in 1977 and lived there until 1997, when she traveled to the United States; a few months after she arrived in the United States, she met Mr. [REDACTED] they were married in 1998, and their daughter was born in 2001. *See Form I-601 and attachments.* According to a statement by Mr. [REDACTED] his wife's mother and sister live in his wife's hometown in the Philippines, but they are not well off. He further states that he would be concerned about living conditions in the Philippines for both his wife and young daughter and that it would be a difficult financial burden for him

to support the family if his wife were in the Philippines; he would be faced with significant childcare expenses if their daughter remained in the United States and significant travel and support costs in the Philippines if their daughter accompanied Mrs. [REDACTED] to the Philippines. See Form I-601, Statement by Mr. [REDACTED]

The record shows that Mr. [REDACTED] provides the sole financial support for the family. Form I-601; see also Affidavit of Support (Form I-864), dated December 13 2001. Also in 2001, Mrs. [REDACTED] lists her status as unemployed beginning in January 1998. Application to Register Permanent Resident or Adjust Status (Form I-485), dated April 3, 2001, attached Biographic Information (Form G-325). Mrs. [REDACTED] also states that she worked in her hometown in the Philippines from 1995 to 1997, and that both her parents reside there. *Id.*

Other than financial records, statements from both Mr. and Mrs. [REDACTED] that they want to remain together and to be able to provide financial and emotional support for their child, and that they are concerned about conditions in the Philippines, there is no information on the record that would be relevant to a hardship determination by the AAO.

The record is silent as to country conditions and their impact, if any, on the ability of Mr. [REDACTED] to move to the Philippines to avoid separation from the applicant or their child. There is no indication that Mr. [REDACTED] would be unable to adjust to living in the Philippines or that he would not be able to find work in the Philippines or that the family's combined income in the Philippines would represent a financial hardship for him. As he is the sole support of the family, though the costs of supporting his family in the Philippines might represent a change in his financial situation, there is no indication that this would be a significant burden if he were to continue working in the United States. There is no mention in the record of Mr. [REDACTED] family ties in the United States or whether such ties, if they existed, would be difficult to sever if Mr. [REDACTED] moved to the Philippines. It appears that Mr. [REDACTED] faces the same decision that confronts others in his situation – the decision whether to remain in the United States or relocate to avoid separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mr. [REDACTED] faces extreme hardship if his wife is refused admission. 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 individuals who are deported. The AAO recognizes that Mr. [REDACTED] will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of deportation to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 section 212(i) of the Act, the burden of proving eligibility rests 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.