

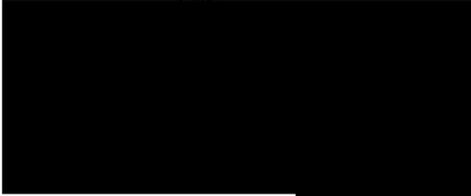
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FILE:

Office: MANILA, PHILIPPINES

Date: JUL 26 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, 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 (U.S.) 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 an immigrant visa to the United States by fraud or willful misrepresentation in 1989. The applicant is the son of two U.S. citizen parents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting officer in charge concluded that there was no evidence in the record to indicate that the adverse effects of the applicant's inadmissibility will exceed that typically suffered by a family in this situation. The application was denied accordingly. *Decision of the Acting Officer in Charge*, dated January 19, 2005.

On appeal, the applicant states that his offense occurred more than 15 years ago and his admission to the United States would not be contrary to the national welfare, safety or security of the United States. The applicant also states that family separation itself constitutes extreme hardship. The applicant asks for his appeal to be reconsidered and approved. *Form I-290B*, dated February 17, 2005.

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 indicates that in 1989 the applicant stated on an immigrant visa application that he was not married, when in fact he was married in 1980. Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's parents. 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).

The AAO finds that the applicant's argument concerning his misrepresentation occurring more than 15 years ago is irrelevant to waiver proceedings under section 212(i) of the Act. A waiver for offenses that occurred 15 years ago or more is only available to applicants in waiver proceedings under section 212(h) of the Act, regarding applicants who have committed crimes involving moral turpitude.

The AAO notes that extreme hardship to the applicant's parents must be established in the event that they reside in the Philippines or in the event that they reside in the United States, as they are 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 parents in the event that they reside in the Philippines. The applicant's father is 83 years old and his mother is 81 years old. They both have been living in the United States for over twenty years. The father submitted medical records showing that he suffers from a stomach ulcer and asthma. In addition, the father submitted documentation showing that when he last traveled to the Philippines he was rushed to the hospital after losing consciousness and hitting his head. He was diagnosed with a subdural hematoma, a blood clot in the tissue surrounding the brain, and underwent emergency surgery to drain the blood. The father states because of this incident he no longer travels to the Philippines. The applicant's parents also state that it would be a hardship for them to relocate to the Philippines because all of their children, except the applicant will be residing in the United States. They have four children living in the United States and a fifth is in the process of obtaining his immigrant visa. The applicant's parents state that the applicant would not be able to support them in the Philippines and they will have no other support network. Because of the applicant's parent's advanced age, various physical ailments, residence in the United States for over 20 years and strong family ties to the United States, the AAO finds that relocation to the Philippines will result in extreme hardship to the applicant's parents.

However, the applicant has not established that his parents would suffer extreme hardship in the event that they remained in the United States. The applicant's mother states that she suffers from hypertension, osteoporosis and a knee injury. There is no documentation in the record showing that these physical ailments are affected in anyway by the applicant's inadmissibility. The applicant's father claims that his ulcer is becoming worse from the stress caused by the applicant's inadmissibility. Again, the applicant's father submitted no documentation to support this claim.

The applicant's parents assert that they will suffer emotionally from being permanently separated from their son and that this separation is causing them financial difficulties. The parents state that they are suffering from emotional stress caused by the loss of income from supporting [REDACTED] in the Philippines. The AAO notes that the applicant submitted no evidence to show that he could not find new employment in the Philippines to support himself. Furthermore, the applicant's parents live with two of their other sons who help support them and there is no documentation to show that the other family members in the United States could not help financially. The applicant's parents also claim that they will be permanently separated from their son if he is not granted the waiver. The AAO notes that the applicant's parents are free to visit the applicant in the Philippines. The father stated that because of the accident he had when he last traveled to the Philippines he will no longer travel there. The AAO finds that the father's decision to not visit the Philippines is his individual choice. There is no documentation in the record establishing that for medical reasons the

applicant's father can no longer travel. In support of their emotional stress the applicant's parents submitted a psychological report from Thomas Neill, a Licensed Psychologist. In his report Dr. Neill states that the applicant's mother suffers from insomnia, loss of appetite and worries dominate her thoughts. He concludes that these symptoms are consistent with Major Depressive Disorder. Dr. Neill also states that the applicant's father suffers from insomnia, worry, loss of appetite, weight loss, and hopelessness. He concludes that the father's symptoms are consistent with a Major Depressive Disorder. Dr. Neill recommends that the parents seek psychiatric care.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's parents and the psychologist. The record fails to reflect an ongoing relationship with the applicant's parents or any history of treatment for the disorder suffered by the applicant's parents. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, they do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering Dr. Neill's findings speculative and diminishing the report's value in determining extreme hardship.

The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, the current record, does not establish that this hardship rises to the level of extreme hardship.

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 parents 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(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.