

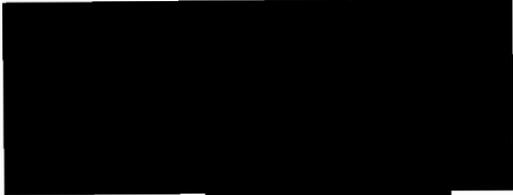


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FILE:

Office: MANILA

Date: JUN 19 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: Self-represented

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 Acting Officer in Charge, denied the waiver application, and it 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 attempting to procure benefits under the Act by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. She 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.

The acting officer in charge 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. *Decision of the Acting Officer in Charge*, dated January 19, 2005.

The record reflects that, in September 2000, the applicant appeared at the U.S. Embassy in Manila, the Philippines, for an immigrant visa interview based on her marriage to [REDACTED] (Mr. [REDACTED]), a naturalized U.S. Citizen. The applicant indicated that she had not been previously married. The interviewing officer discovered that the applicant was married to [REDACTED] (Mr. [REDACTED]) in the Philippines on July 30, 1986 and that the marriage had not been legally terminated. The U.S. Embassy denied the applicant's immigrant visa application. On May 31, 2001, the First Judicial Region Trial Court of the Philippines declared the presumptive death of Mr. [REDACTED] and the eligibility of the applicant to contract a new marriage. On July 25, 2001, the applicant remarried Mr. [REDACTED] in the Philippines. On August 20, 2001, Mr. [REDACTED] filed a second Petition for Alien Relative (Form I-130) on behalf of the applicant. The Form I-130 was approved on March 19, 2002. On October 18, 2004, the applicant filed the Form I-601 with documentation supporting her claim that her family members would suffer extreme hardship.

On appeal, the applicant contends that the district director erred in finding her inadmissible under section 212(a)(6)(C) of the Act for attempting to procure a benefit under the Act by fraud or willful misrepresentation of a material fact and in finding that her husband would not suffer extreme hardship. *See Form I-290B and Applicant's Brief* dated February 9, 2005.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

The acting officer in charge found that, because the applicant had concealed her first marriage during her September 2000 immigrant visa interview, she had sought to procure a benefit under the Act by fraud or willful misrepresentation of a material fact. The applicant asserts that she did not seek to procure a benefit under the Act by fraud or willful misrepresentation of a material fact because she was free to contract a marriage to Mr. [REDACTED] because of Mr. [REDACTED]'s absence. The applicant states that, because Filipino law permits a spouse to terminate a marriage for a presumed death after a spouse has been absent for more than five years, she was entitled to contract a new marriage to Mr. [REDACTED]. There is no evidence in the record to

suggest that a spouse is legally free to marry another without a court decree of presumptive death. Moreover, the applicant indicated that she had not been previously married. The applicant did not indicate that she had been previously married and believed the marriage to be legally terminated due to Mr. [REDACTED] absence.

The AAO finds that the applicant willfully misrepresented a material fact by concealing her prior marriage to Mr. [REDACTED] during her September 2000 immigrant visa interview in an attempt to obtain a benefit under the Act. The applicant, therefore, is inadmissible under section 212(a)(6)(C) of the Act because she sought to procure a benefit under the Act, by fraud or willfully misrepresenting a material fact.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

On appeal, the applicant contends that her husband would experience extreme hardship if the applicant were to be denied the waiver. In support of the appeal, the applicant only submitted the above-referenced brief. The entire record of proceeding was reviewed and considered in rendering a decision on the appeal.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore 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.

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 at 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 alien has established extreme hardship to a qualifying relative 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. The BIA has held:

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).

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 record reflects that, on July 25, 2001, the applicant married Mr. [REDACTED] who is a native of the Philippines who became a lawful permanent resident of the United States in 1992 and a naturalized U.S. citizen in 1999. The record reflects further that the applicant is in her 50's, Mr. [REDACTED] is in his 70's, and Mr. [REDACTED] does not have any health concerns.

The applicant asserts that Mr. [REDACTED] would suffer extreme hardship if he were to remain in the United States without her. The applicant, on the Form I-290B and in her brief and affidavit, states "what would be the "extreme" hardships that my husband and I would suffer except the absence of one beside the other, to console one another in time of loneliness, uncertainty as to the physical and mental condition of one who lives a thousand miles away from him or her, to assist one another in companionship and many activities incident to family necessities . . . the petitioner (Mr. [REDACTED]) would be denied his right to live together with his wife in the United States of America. This will deprive him of his right to pursue his happiness . . . my husband and I have plans to take care of each other . . . emotionally we are depressed." There are no documents in the record to indicate the applicant and Mr. [REDACTED] incomes or household expenses. As such, the record does not support a finding of financial loss that would result in an extreme hardship to Mr. [REDACTED] if he had to support himself without the applicant. There is no evidence in the record to suggest that Mr. [REDACTED] suffers from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. While the hardships faced by Mr. [REDACTED] with regard to separation from the applicant are unfortunate, they are what would normally be expected with any spouse whose alien spouse is denied admission to the United States and must remain in a foreign country.

The applicant does not contend Mr. [REDACTED] would suffer hardship if he were to return to the Philippines with the applicant. The AAO is, therefore, unable to find that the applicant's spouse would experience hardship should she be denied the waiver. Additionally, 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 and, as discussed above, Mr. [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Mr. [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in

common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.