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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

Office: PHOENIX, AZ

Date: NOV 07 2009

IN RE:

[REDACTED]

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:

[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.

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, Phoenix, AZ, 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 procured admission into the United States by fraud or willful misrepresentation in October 1998 and in January 1990. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that a review of the documentation in the record, when considered in its totality, reflects that the applicant failed to show that a qualifying relative would suffer extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated November 9, 2004.

On appeal, counsel submits additional evidence and states that the decision of the District Director was arbitrary, capricious and a gross abuse of the service's discretionary authority. *Form I-290B*, dated December 4, 2004.

The record indicates that on September 9, 2003, during the applicant's adjustment interview she made a sworn statement stating that in October 1989 and January 1990 she used a Filipino passport and visitor's visa that did not belong to her to procure admission into the United States.

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.

A 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 herself experiences or her child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or in the event that he resides in the United States, as he 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 her spouse in the event that he resides in the Philippines. The applicant's spouse states in his affidavit that he would not be able to find employment in the Philippines as an engineer. In support of this claim the applicant's spouse submitted various country reports stating that the unemployment rate in the Philippines is high. The applicant's spouse also states that he suffers from high blood pressure and high cholesterol and would not receive health insurance and would have limited health services in the Philippines. The applicant's spouse submitted medical tests results to support his claims. The applicant's spouse also states that he cannot relocate to the Philippines because he must stay in the United States to care for his ailing mother. The applicant's spouse has two siblings, but he states that they are not in the financial position to care for their mother. The applicant's spouse submitted a record of his mother's various ailments, including manic depression and epilepsy.

The AAO notes that in her current application, the applicant has not shown that he U.S. citizen spouse will suffer extreme hardship as a result of relocating to the Philippines. The applicant's spouse submitted country reports to show that the unemployment rate in the Philippines was very high. However, these reports do not reflect that a trained engineer or professional with a college education would have difficulty finding employment in the Philippines. In addition, the applicant's spouse submitted no documentation to show that health care for high blood pressure and cholesterol is not available in the Philippines. The applicant's spouse also did not provide supporting documentation from his siblings to show that they could not afford to care for their mother in the spouse's absence. The applicant's spouse must submit documentation that supports his assertions. In the current record he has not done so. Therefore, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states in his affidavit dated December 4, 2004, that he was abused as child and has suffered emotionally from the effects of this abuse for his entire life. He states that he suffered from chemical and alcohol dependency. The applicant's spouse states that he is currently seeing a specialized therapist. He also states that the applicant is always there to listen and to help him find the right direction in life. **The applicant's spouse submits a letter from certified counselor, [REDACTED]** dated March 3, 2004. Ms. [REDACTED] states that she had been consulted by the applicant's spouse regarding his feelings of anxiety resulting from the possible separation from the applicant. 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 spouse and the counselor. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the problems suffered by the applicant's spouse. Moreover, Ms. [REDACTED] makes no reference to the child abuse suffered by the applicant's spouse and the emotional problems that resulted from this abuse. Thus, Ms. [REDACTED] letter does not reflect the insight and elaboration commensurate with an established relationship with a counselor, thereby rendering her findings speculative and diminishing the report's value in determining extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the current record, does not support his statements regarding his troubled past and his need for the applicant's support. Therefore, the record does not reflect that the applicant would suffer extreme hardship as a result of the applicant's inadmissibility.

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 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.

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.