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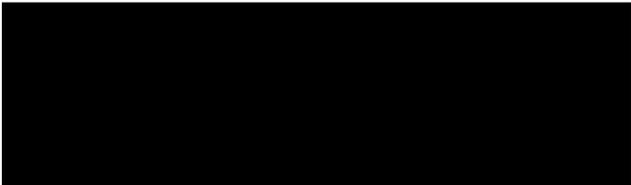


FILE: [REDACTED] Office: SAN FRANCISCO (SACRAMENTO), CA Date: **AUG 03 2007**

IN RE: Applicant: [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:



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. Her husband, a U.S. citizen, filed Form I-130, Petition for Alien Relative, on behalf of the applicant on November 27, 2002. Simultaneously, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status (Form I-485). On May 12, 2003, the applicant appeared for the adjustment interview. Based on sworn testimony provided by the applicant, it came to the attention of the interviewing officer that the applicant had misrepresented her name and provided an altered passport in June 1996, at the time she applied for a nonimmigrant visa at the American Embassy in Manila, Philippines and subsequently, at the port of entry in San Francisco, California. The interviewing officer requested a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601); the applicant provided the requested form and supporting documentation on August 8, 2003. The Form I-601 was denied by the acting district director on September 8, 2003 and the Form I-485 was subsequently denied.

The applicant appealed the denial by filing Form I-290B on October 14, 2003; the appeal was rejected by the AAO on April 29, 2005 as being untimely filed. The applicant re-filed a Form I-485 on March 7, 2005. On June 27, 2005, the Form I-485 was denied. On July 25, 2005, the applicant filed a motion to reopen the I-485 denial and included a Form I-601. The Form I-485 was reopened on July 27, 2005 but the Form I-601 was denied on September 13, 2005. Counsel submitted an appeal on October 15, 2005, and a brief and supporting documentation with respect to the I-601 appeal on November 7, 2005.

The applicant 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 procured entry into the United States by fraud or willful misrepresentation. 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), in order to reside in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *Decision of the District Director*, dated September 13, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case. In support of the appeal, counsel submits a brief, dated October 15, 2005; a notarized declaration by the applicant, dated August 6, 2003; a notarized declaration by the applicant's spouse, a U.S. citizen, dated November 4, 2005; a psychological evaluation regarding the applicant's spouse, dated June 30, 2003; a psychological evaluation regarding the applicant's spouse, dated October 14, 2005; proof of the applicant and the applicant's spouse's employment; income and expense sheet; evidence of medical insurance; a Consular Information Sheet on the Philippines; copies of the applicant's spouse's medical records; documentation evidencing that the applicant's spouse has a prescription for Prozac; a U.S. Department of State Public Announcement, dated February 18, 2005; a Travel Warning for the Philippines, dated March 23, 2005; numerous articles with respect to conditions in the

Philippines; and photos of the applicant and her spouse. 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.

Based on the evidence in the record, the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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) 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 applicant herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by 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).

*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 spouse or parent in 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.

This matter arises in the Sacramento district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not

predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

To begin, counsel asserts that the applicant’s spouse will suffer emotional hardship if the applicant is removed from the United States. As the applicant’s spouse states in his declaration, “...If my wife, [redacted] [the applicant], is removed from the United States, I will experience extreme hardship from her absence... [redacted] and I have been married for over three (3) years. Over the course of our relationship, our love for each other has grown beyond our expectations... The thought of being separated from [redacted] is excruciating. I have never been separated from my wife since the day we were married. My wife is my source of stability and strength. I worry that if we are separated, our marriage may end... The stress from [redacted]’s current situation has been overwhelming and I am suffering from depression... I have been taking anti-depressants. I was prescribed Prozac in December 2004 after seeing a licensed clinical social worker referred by my physician because I was suffering from suicidal tendencies, drinking, irregular appetite, weight gain, low energy, sleep disturbance, and problems with memory and concentration.” *Declaration of [redacted]*, dated November 4, 2005.

In support of the applicant’s spouse’s statements, counsel offers a psychological evaluation from [redacted] [redacted] Clinical and Consulting Psychologist, based on an interview she had with the applicant’s spouse on August 20, 2005. In said evaluation, [redacted] confirms that she initially evaluated the applicant’s spouse in June 2003, and the current evaluation, more than two years later, provides a status update. [redacted] states that the applicant’s spouse “...is suffering from a primary diagnosis of Major Depressive Episode with a secondary diagnosis of Anxiety NOS. This is a serious decline from his previous diagnosis of two years ago at which time he was diagnosed as having an Adjustment Reaction with anxiety...” *Psychological Evaluation by [redacted], Licensed Clinical Psychologist*, dated October 14, 2005.

Two separate evaluations in a two year period by a psychologist do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. Moreover, although the psychologist has determined that the applicant’s spouse is depressed, the psychologist makes no recommendations for the applicant’s spouse’s continued care, such as regular therapy sessions or increased medications, to further support the gravity of the situation. Finally, the applicant’s spouse’s situation does not appear to be extreme as he is clearly able to maintain long-term, consistent employment, as he has been employed with his current employer since May 2002. *Letter from Employee Relations Supervisor, Six Flags Marine World*, dated July 1, 2003.

The psychological evaluations of the applicant’s husband show that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant’s departure from the United States. Although the depth of concern and anxiety over the applicant’s immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited

circumstances. 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 current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), 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).

In addition, the applicant's spouse, in his statement, references the financial burden of maintaining two households, one in the United States for himself, and one for the applicant were she removed from the United States. As the applicant's spouse states, "...If [the applicant] is forced to leave the United States, my income alone will not be sufficient to meet our financial obligations and the monthly necessities for my son and me...Our combined incomes amount to approximately \$4097 per month. Our monthly financial obligations include for rent, food, utilities, insurance payments, and credit card payments....Without income, I will be left alone to cover these expenses...If my wife were to return to the Philippines, I would suffer extreme hardship because not only will I be responsible to pay all of our liabilities in the United States but I would have to support her in the Philippines. She will have a difficult time finding a job there, so I will have to send her money for her rent and food..." *Declaration of* at 3. Counsel provides no explanation for why the applicant would not be able to be employed in the Philippines, thereby providing herself a safe and prosperous environment, where she can assist the applicant's spouse with respect to household expenses, and the expenses that the applicant's spouse would incur in traveling to the Philippines to visit the applicant regularly. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel also provides information about country conditions in the Philippines. The information is general in nature, and does not document what specific negative conditions the applicant herself would encounter in the Philippines which would lead to extreme hardship to the applicant's spouse.

Finally, the applicant's spouse asserts that he will suffer extreme hardship were he to accompany the applicant to the Philippines, as he would suffer family separation, loss of employment, financial uncertainty, danger to his life, safety and health and loss of medical insurance. *Id.* at 3. The AAO has determined that extreme hardship would exist were the applicant's spouse to accompany the applicant to the Philippines. The applicant's spouse, 44 years old at the time the appeal was filed, was born and raised in the United States and

has a number of relatives, including two sisters and a brother, residing in the United States. He has no family or ties to the Philippines, and is in fact strongly immersed in the community, as the record indicates that he has been a volunteer firefighter and emergency worker for eight years. *Declaration of* [REDACTED] at 3-6. In addition, the applicant's spouse does not speak the Filipino dialect and will encounter difficulty in obtaining adequate employment, adequate medical care and medical insurance. Given these factors, the applicant's spouse would experience extreme hardship if he were to accompany the applicant to the Philippines.

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 will face extreme hardship if the applicant is removed. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is no documentation establishing that his financial, emotional or psychological hardship would be any different from other families separated as a result of immigration problems. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional hardship he would face rise to the level of "extreme" as contemplated by statute and case law.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.