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U.S. Citizenship
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Services

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HL

FILE: [REDACTED]

Office: MANILA, PHILIPPINES

Date: AUG 28 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:

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.

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 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 Philippine. Pursuant to the record, in 2000, the applicant presented a fraudulent document to a consular officer when attempting to obtain a B-1/B-2 tourist visa. The applicant was thus 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized 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 his U.S. citizen spouse and child.

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 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...

Moreover, the officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 27, 2005.

In support of the appeal, the applicant has provided a statement on the Form I-601, dated November 25, 2005. In addition, the applicant's spouse, a naturalized U.S. citizen, has sent three follow-up letters to the AAO. The entire record was reviewed and considered in rendering this decision.

The record contains several references to the hardship that the applicant's child would suffer if the applicant's waiver of inadmissibility is not granted. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section

212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or their child cannot be considered, except as it may affect the applicant's spouse.

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.

To begin, the applicant asserts that the applicant's spouse has suffered emotional hardship due to the applicant's inadmissibility. As the applicant states on the Form I-290B, "...My wife was totally devastated and dishearted [sic] upon receipt of my denial notice. She has once again slipped into depression as her ultimate dream of her family being finally united has shattered. She had previously sought professional help while she was pregnant and had undergone some counseling after she gave birth because she was having trouble coping up with all the changes in her life without a husband to support her and a father for our growing daughter. Her psychiatrist told her that her depressions could lead to a more serious problem. It has been eleven months since she gave birth and my wife has a potential to experience 'post-partum depression.' The thought of being a single parent forever and her growing sadness over our daughter's 'not-so-normal' developing years are not doing her any good..." *Statement from* [REDACTED], dated November 25, 2005.

No documentation has been provided that establishes that the applicant's spouse is experiencing emotional hardship due to the applicant's absence. Documentation such as a mental health evaluation from a licensed professional that has treated the applicant's spouse on a consistent basis, outlining the applicant's spouse's specific medical conditions and the recommendations for her continued care, to further support the gravity of the situation has not been provided. Moreover, it has not been established that the applicant's spouse's medical condition is extreme, as the record indicates that she is able to maintain full-time employment and a household. 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)).

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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 her statement, references the financial burden of maintaining the household and caring for her child without the applicant’s assistance as he is currently in the Philippines. The applicant’s spouse states “...I’m the only one supporting my baby and she needs a father to provide financial support as well as emotional support. Since he still lives in the Philippines, he cannot provide financial support for things such as diapers, formula, or clothing...” *Letter from* [REDACTED] dated September 12, 2005. No explanation has been provided for why the applicant is not employed in the Philippines, thereby assisting the applicant’s spouse in the United States with respect to the costs associated with maintaining the household and raising and caring for their child.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. The record indicates that the applicant and their child are both in the Philippines. *Letter from* [REDACTED] [REDACTED] dated June 6, 2006. The applicant has not asserted any reasons why the applicant’s spouse is unable to relocate to the Philippines to unite the family.

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 unable to reside in the United States. Rather, the record demonstrates that she 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 her financial, emotional or psychological hardship is 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 she faces 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.