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U.S. Citizenship
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[Redacted]

JUN 20 2007
Date:

FILE: [Redacted]

Office: LOS ANGELES, CALIFORNIA

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 entering the United States using a passport containing a nonimmigrant visa in someone else's name. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife and mother-in-law.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated November 1, 2005¹.

On appeal, the applicant, through counsel, asserts the "District Director abused her discretion by performing only a cursory examination of the facts and evidence." *Brief in Support of Appeal*, page 3, filed December 28, 2005.

The record includes, but is not limited to, counsel's brief, statements by the applicant's wife, and medical reports and letters regarding the applicant's wife's medical conditions. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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

¹ The District Director reissued the I-601 decision after counsel and the applicant claimed they did not receive the initial decision dated November 24, 2004.

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 AAO notes that the record contains several references to the hardship that the applicant's mother-in-law would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident mother-in-law. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's mother-in-law will not be considered, except as it may cause hardship to the applicant's wife.

In the present application, the record indicates that on March 7, 1992, the applicant entered the United States by presenting a passport containing a nonimmigrant visitor visa in the name of [REDACTED]. On December 14, 1997, the applicant married [REDACTED], a lawful permanent resident. On December 29, 1997, the applicant filed a Form I-130, which was approved on September 19, 1998. On November 3, 2000, the applicant's wife became a United States citizen. On October 10, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Form I-601. On November 24, 2004, the District Director denied applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On January 11, 2005, the District Director denied the Form I-485; however, she reopened the Form I-485 on November 1, 2005. On November 1, 2005, the District Director reissued the decision denying the Form I-601.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's spouse would face extreme hardship if the applicant were removed to the Philippines. The applicant's spouse states that she "cannot survive without [the applicant]." *Supplemental Affidavit*, page 2, dated December 23, 2005. The applicant's spouse states she is "totally dependent on [the

applicant] for financial support. Even further, [the applicant] provides for [her] elderly mother.” *Id.* As stated above, the applicant’s mother-in-law is not a qualifying relative for a waiver under section 212(i) of the Act. Counsel states the applicant is the “primary breadwinner;” however, the AAO notes that the applicant’s wife stated that she works part-time; therefore, she is not “totally dependent” on the applicant “for financial support.” See *Brief in Support of Appeal*, page 6, *supra*; see also *Supplemental Affidavit*, page 2, *supra*. The applicant’s wife claims that her “worsening health and [the applicant’s] immigration problems...are a constant source of stress and anxieties, which are taking an unnecessary toll on [her] fragile state.” *Id.* at 1. The AAO notes that there are no professional evaluations for the AAO to review to determine how the “stress and anxiety” is affecting the applicant’s wife mentally, emotionally, and/or psychologically. The applicant states she has “an irregular heartbeat, diabetes, and thyroid disease.” *Id.* at 2. The AAO finds that the applicant has established that his wife suffers from diabetes, hyperthyroidism, and hyperlipidemia. See *Letter from [REDACTED]*, dated November 17, 2005; see also *Brief in Support of Appeal*, page 8, *supra*. The applicant’s wife states “it would be impossible for [her] to find comparable medical treatment in the Philippines;” however, there was no documentation submitted establishing that the applicant’s wife could not receive treatment for her health conditions in the Philippines. Further, her doctors did not claim that she had to remain in the United States to receive her treatments and prescriptions. See *Letter from [REDACTED]* *supra*; see *Letter from [REDACTED]* dated August 23, 2002. The applicant’s wife states she is the primary caretaker for her elderly mother and the applicant provides financial assistance to her mother. *Supplemental Affidavit*, page 3, *supra*. It has not been established that the applicant’s wife has no siblings or family who reside in the United States who could not help take care of her elderly mother. The AAO notes that the applicant’s wife came to the United States when she was 38 years old; therefore, she spent all her formative years in the Philippines, and it has not been established that she has no family in the Philippines. Additionally, the applicant has 7 children in the Philippines and six of those children are adults. Counsel cites the poor economic conditions and general instability in the Philippines as further reasons that the applicant and his wife cannot return there. *Brief in Support of Appeal*, page 9, *supra*. The AAO finds that the applicant has failed to establish extreme hardship to his United States citizen spouse if she accompanies him to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant’s spouse if she remains in the United States, maintaining her part-time employment and helping to care for her mother. The applicant’s wife states she does not drive, so she is dependent on him to drive her “everywhere.” *Supplemental Affidavit*, dated November 19, 2002. The AAO notes that the applicant and his wife married in 1997, and presumably his wife used other modes of transportation before they married, and it has not been established that his wife could not rely on another mode of transportation. As a United States 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. Additionally, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to his spouse’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his spouse if she remains in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's wife will endure hardship as a result of her husband not being able to enter the United States. However, her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.