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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

42

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: JUN 25 2007

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. The matter 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining an employment authorization card through fraud. The record indicates that the applicant's spouse is a lawful permanent resident and he 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 lawful permanent resident wife.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's lawful permanent resident spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated February 7, 2005.

On appeal, the applicant, through counsel, states that the denial of his admission into the United States would result in extreme hardship to his lawful permanent resident wife. *Brief attached to Form I-290B*, filed March 21, 2005.

The record includes, but is not limited to, counsel's brief, the applicant's marriage certificate, and a psychological evaluation on the applicant's spouse by [REDACTED] dated December 13, 2004. 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 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...

In the present application, the record indicates that the applicant and his wife, [REDACTED] were first married in the Philippines on June 15, 1978. The applicant entered the United States as a visitor on May 21, 1991. On January 12, 1998, the applicant's brother, [REDACTED], filed a Petition for Alien Relative (Form I-130) for the applicant, which was approved on November 5, 1998. On June 19, 1998, the applicant and his wife divorced. In 2001, [REDACTED] became a lawful permanent resident. In 2002, the applicant obtained an Employment Authorization Document (EAD) by submitting a fraudulent Application for Employment Authorization (Form I-765). On June 15, 2004, the applicant and [REDACTED] remarried. On March 18, 2004, the applicant's United States citizen son, [REDACTED], filed a Form I-130 for the applicant, which was approved on February 7, 2005. Additionally, on March 18, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On January 6, 2005, the applicant filed a Form I-601. On February 7, 2005, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his lawful permanent resident spouse. However, on July 15, 2005, the Form I-485 was reopened based on a motion to reopen by the Citizenship and Immigration Services (CIS).

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 lawful permanent resident 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 lawful permanent resident spouse would face extreme hardship if the applicant were removed to the Philippines. Counsel claims the "[s]pouse's psychological health, family responsibilities, and community ties would prevent her from [sic] living in the Philippines with her husband." *Brief attached to the Form I-290B*, page 4, filed March 21, 2005. The AAO notes that the applicant's wife is a native of the Philippines, who spent her formative years in the Philippines, and her mother and five siblings still reside in the Philippines. *See Psychological Evaluation by [REDACTED]* dated December 13, 2004. Counsel states "[REDACTED] psychological hardships have proven themselves to be particularly severe and have the potential of causing medical illness, hospitalization, or even death." *Brief attached to the Form I-290B*, page 4, *supra*. [REDACTED] diagnosed the applicant's wife with

depression and anxiety, and she states that if the applicant's wife "is exposed to further anxiety producing situations, such as the loss of her husband, her levels of anxiety and depression would surely increase, further aggravating the possibility for suicidal ideation." *Psychological Evaluation by [REDACTED]*, *supra*. However, the AAO notes that [REDACTED] states the applicant's wife "does not endorse any statements reflecting suicide ideation." *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depression and anxiety suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, 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. Counsel cites to poor economic conditions and general instability in the Philippines as reasons that the applicant's spouse cannot return there. *See Brief attached to the Form I-290B*, page 6, *supra*. Counsel claims the applicant's wife would not be able to find employment in the Philippines because of age discrimination. *Id.* However, the AAO notes that the applicant's wife is a Certified Nurse Assistant and it has not been demonstrated that she could not obtain a similar position in the Philippines. Additionally, the applicant has not established that his wife could not receive treatment for her psychological problems in the Philippines. The AAO finds that the applicant failed to establish extreme hardship to his spouse if she accompanies him to the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's lawful permanent resident spouse if she remains in the United States, maintaining her employment and close proximity to her son and her church. As a lawful permanent resident, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel and [REDACTED] state that the applicant's wife is "distraught at the idea of not living with her husband" and she will suffer psychological hardships if she is separated from the applicant. *See Brief attached to the Form I-290B*, *supra*; *see also Psychological Evaluation by [REDACTED]*, *supra*. The AAO notes that the applicant and his wife were divorced on June 19, 1998, and remarried on June 15, 2004, and it has not been established that the applicant's wife suffered any psychological problems during this separation. Counsel states that the applicant's wife supports herself with the help of the applicant, and if the applicant "were not allowed to stay, it would [be] a severe economic hardship." *See Brief attached to the Form I-290B*, page 6, *supra*. The AAO notes that no documentation was submitted establishing that the applicant's son, who is an adult who resides near his mother, could not help his mother financially. Further, beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to his wife'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).

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 lawful permanent resident wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, 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.