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JUN 29 2007

FILE:

Office: LOS ANGELES (SANTA ANA) CA Date:

IN RE:

PETITION: 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 PETITIONER:

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

The applicant, [REDACTED] 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 engaging in willful fraud and misrepresentation of material fact in order to gain admission into the United States. The applicant is the wife of a naturalized citizen of the United States. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director denied the waiver application, concluding that the applicant, who filed the Form I-360 as a self-petitioner battered spouse, failed to establish that she would suffer extreme hardship if the waiver application were denied. *Decision of the District Director, dated March 27, 2006.*

The AAO will first address the finding of inadmissibility 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).

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

- (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 chapter is inadmissible.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record reflects that the applicant gained admission into the United States by presenting to immigration officials a Philippine passport and nonimmigrant visa bearing a false identity, that of "[REDACTED]". The applicant claims that she did not know that the passport was not hers because it had her photograph. *Record of Sworn Statement, Affidavit-Witness, dated November 1, 2005.* The record contains a copy of the nonimmigrant visa bearing the name "[REDACTED]" which the applicant presented to immigration officials to gain entry into the country. *Form I-94 Departure Record.* Thus, the evidence of record evinces that the applicant knowingly presented fraudulent documents to immigration officials so as to gain admission into the United States.

In *Esposito v. INS*, 936 F.2d 911, 912 (7th Cir.1991) the Seventh Circuit Court of Appeals found that an alien who presented immigration officials at the border with an Italian passport bearing his picture, but someone else's name, engaged in willful fraud and misrepresentation of material fact. It stated that "[a]n individual

who knowingly enters the United States on a false passport has engaged in willful fraud and misrepresentation of material fact.” *Id.* at n.1.

Accordingly, there is substantial evidence to support the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact. She knowingly presented to U.S. immigration officials documents bearing a false identity so as to gain admission to the United States. The applicant therefore engaged in willful fraud and misrepresentation.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted here.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or clause (ii) or (iii) of section 1154 (a)(1)(B) of this title, the alien demonstrates extreme hardship to the alien or the alien’s United States citizen, lawful permanent resident, or qualified alien parent or child.

On appeal, the applicant makes the following statements. Her husband is not working because he is under medical care for drug addiction. She is responsible for paying for his car and other bills, for overseeing the care of her 65-year-old mother, and for financially assisting her father who has health problems. She is the only one financially supporting her father and mother; she has only one young brother. Her age is an obstacle in finding employment in the Philippines. To enter the United States, she used an assumed name without malice; she was only 20 years old and had followed the advice of an agency in her country.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent, in the instant case where there is an approved Form I-360, first upon a showing that the bar imposes an extreme hardship to the alien or the alien’s United States citizen, lawful permanent resident, or qualified alien parent or child. 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 concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the BIA set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with

respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to the alien or to her United States citizen, lawful permanent resident, or qualified alien parent or child, as the applicant was granted classification under clause (iii)(I) of 8 U.S.C. § 1154(a)(1)(A).

The evidence in the record indicates that the applicant’s father, who lives in the Philippines, has health problems. The document, dated April 9, 2005 and signed by [REDACTED], indicates that [REDACTED] is under [REDACTED]’s care. However, this evidence is not sufficiently legible, and lacks adequate detail, for the AAO to determine the nature of [REDACTED]’s medical problems. The document entitled “Surgical Pathology Report” indicates no findings of note regarding [REDACTED]’s health other than the aorta, iliac, and femoral arteries are atheromatous. But no evidence in the record explains the significance of this finding. There is no evidence in the record showing that the applicant’s father is a lawful permanent resident or citizen of the United States.

The applicant is nearly 40 years old. She entered the United States in 1990 and married [REDACTED] in 1998. The record contains a temporary restraining order that the applicant filed against her husband on September 6, 2000. It also contains two protective orders in criminal proceeding (CLETS) with validity dates from September 27, 2000 to September 27, 2001 and September 25, 2003 to September 29, 2006. The protective orders prohibit contact between the applicant and [REDACTED]. The record contains income tax records, cancelled checks, and invoices pertaining to a car. It also contains an explanation of health care benefits relating to emergency service rendered in 2005 to the applicant’s husband. The applicant graduated from college in the Philippines, earning a degree in psychology. *Service Station Employment Application*. The Form 1040 filed for 2004 shows the applicant’s filing status as “single”; but no evidence in the record conveys that she and [REDACTED] are divorced. The record contains an approved Form I-360.

The AAO finds that the district director was correct in denying the waiver application.

The applicant states that she is responsible for paying for the car payments of [REDACTED]. However, the obligation of making car payments is insufficient to establish extreme hardship to the applicant.

The U.S. Supreme Court held that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

It is noted that although the applicant asserts that she is responsible for overseeing her mother's care, there is no evidence in the record establishing that her mother requires constant care and that the applicant has provided such care. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). It is noted that there is no evidence in the record establishing that the applicant's mother is a lawful permanent resident or citizen of the United States.

The applicant states that she provides financial assistance to her father who has health problems and lives in the Philippines. The record contains four cancelled checks totaling \$400 that were issued from January 2003 to March 2003, and were cashed by the applicant's father. Four checks issued for a three month period, the AAO finds, are insufficient to establish that the applicant has consistently provided financial support her father. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. As previously stated, there is no evidence in the record of the legal status of the applicant's father: whether he is a lawful permanent resident or citizen of the United States.

The applicant's assertion that she will not find employment in the Philippines because of her age is not supported by evidentiary materials. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, economic hardship claims of not finding employment in the Philippines and not having proper medical care benefits were found not to reach the level of extreme hardship. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that the petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute "extreme hardship and that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship."

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" Carrete-Michel's claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57." The AAO finds that there is no evidence in the record to establish that the applicant would be completely unable to find work in the Philippines.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.