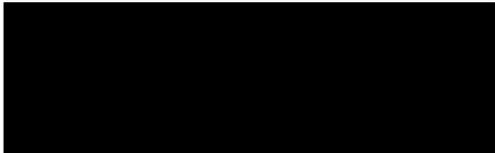




U.S. Citizenship  
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Office: LOS ANGELES, CA

Date: MAR 29 2007

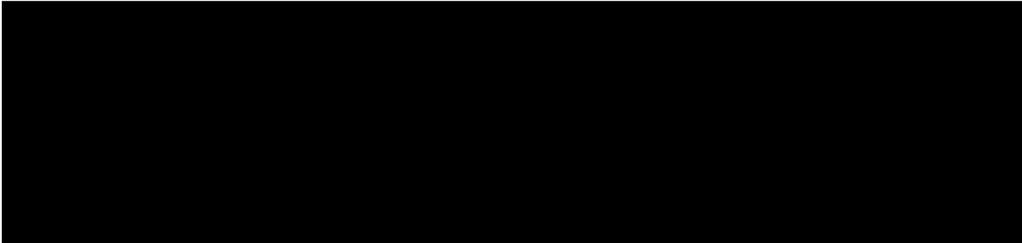
IN RE:

Applicant:



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.

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 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), based on his qualifying relative, his U.S. citizen wife [REDACTED]. The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and accordingly denied the waiver request. *Decision of the District Director*, dated March 30, 2005.

On appeal, counsel makes the following assertions. The applicant entered the United States on March 22, 1992, on a visitor visa that did not have his true identify. In 1992, he applied for political asylum using his true identify and divulged that he had entered with a false name. He was never scheduled for an interview for the asylum application. In August 1994, he married [REDACTED], a naturalized citizen, and filed the Forms I-130, I-485, and I-601. The Citizenship and Immigration Services (CIS) abused its discretion in finding that [REDACTED] would not suffer extreme hardship if her husband were removed from the country. Her husband, who has resided here for 13 years, is a professional surgical assistant, has no criminal record, and never received public assistance. They have been married 10 years, are gainfully employed, earn over \$65,000 annually, and own a house. The applicant's only mistake is that he used a false surname in entering the United States in 1992, and he never misrepresented himself after his entry. Had he committed one of several minor crimes, CIS would have granted a waiver. To deny a waiver for misrepresentation of his true identity is unjust and not in the spirit of family unification. The applicant's wife would not be able to return to the Philippines; she has established roots in the United States and would have extreme difficulties securing gainful employment in the Philippines. Her return to the Philippines is tantamount to removal of a U.S. citizen. The holding in *Wang v. INS*, 622 F. 2d 1341 (1980) is that "extreme hardship" requires less hardship than "exceptional hardship." The cases of *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); *Papavat v. INS*, 638 F. 2d 87 (1980); *Matter of S*, 5 I&N Dec. 409 (1953); *Matter of H*, 5 I&N Dec. 416 (1953); *Matter of U*, 5 I&N Dec. 413 (1953); *Matter of Z*, 5 I&N Dec. 419 (1953); *Matter of M*, 5 I&N Dec. 448 (1953); and *Matter of W*, 5 I&N Dec. 586 (1953) interpret the term "extreme hardship." *Applicant's Brief on Appeal*.

In this proceeding, the AAO will first address the director's finding the applicant inadmissible under 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

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.

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 contains a copy of the Form I-94, Departure Record, completed by the applicant. This document shows his name as "[REDACTED]," his birth date as August 30, 1973, and his entry pursuant to a B-2 visa. A copy of the applicant's passport reflects the name "[REDACTED]" his birth date as August 30, 1973, and his occupation as "student." Counsel states that "[REDACTED] only mistake is that he used a false surname in entering the [United States] in 1992." "He never misrepresented himself after his entry." The record also contains a copy of [REDACTED] asylum application and his withdrawal of the asylum application in order to apply for permanent residence. *Request for Asylum in the United States, Form I-539, and Record of Sworn Statement in Affidavit Form, Affidavit Witness*, dated July 28, 2004. It is noted that there is no evidence in the record that is inconsistent with counsel's assertions regarding the sequence of events leading to the applicant's admission into the United States.

A case that is relevant here is *Matter of D-L- & A-M*, 20 I. & N. Dec. 409 (BIA 1991). In *Matter of D-L- & A-M*, the Board of Immigration Appeals (BIA) held that outside of the transit without visa context, an alien is not excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents. In the case, the BIA determined that the evidence showed that the applicants purchased a fraudulent Spanish passport bearing a nonimmigrant visa for the United States; upon arrival in Miami, they surrendered the false document to United States immigration officials, immediately revealed their true identity, and asked to apply for asylum. The BIA concluded that their action did not provide a basis for excludability under section 212(a)(19) of the Act: it did not involve fraud or misrepresentation to an authorized official of the United States Government. *Id.* at 412-413.

With the instant case, so as to gain admission into the United States, [REDACTED] presented documents to immigration officials that misrepresented his true identity, and only after he gained admission into the country did he cease to misrepresent his true identity. Thus, the fact pattern of [REDACTED] misrepresentation is distinguishable from that in *Matter of D-L- & A-M*.

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 of the applicant as inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who seeks or has sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact. He presented to U.S. immigration officials documents, a

passport and Form I-94, bearing a false identity so as to gain admission to the United States. He therefore engaged in willful fraud and misrepresentation of material fact.

The AAO will now consider counsel's assertion that the applicant qualifies for a section 212(i) waiver of inadmissibility.

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.

The applicant seeks a waiver of inadmissibility. 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 to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's wife. 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).

U. S. courts have 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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in the assessment of hardship factors in the present case.

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 applicant’s wife. Extreme hardship to the applicant’s wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

Counsel states that [REDACTED] would suffer extreme hardship if her husband were removed from the country. Counsel asserts that [REDACTED] has resided here for 13 years, has been married to his wife for 10 years, and owns a house with her. Counsel indicates that denying [REDACTED] waiver is inconsistent with the spirit of family unification.

The evidence in the record and counsel’s assertions regarding the applicant and his wife are not sufficient to establish extreme emotional hardship to [REDACTED] in the event that her husband’s waiver is not granted and she remains in the country. The AAO is mindful of and sympathetic to the emotional hardship that follows as a result of separation from a loved one. With the circumstances here, the AAO finds that [REDACTED] situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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. The record before the AAO is insufficient to show that the emotional hardship to be endured by [REDACTED] upon separation from her husband if she remains in the United States, is unusual or beyond that which is normally to be expected upon deportation.

[REDACTED] does not claim that she will experience extreme economic hardship if she remains in the country without her husband. The record reflects that [REDACTED] is employed as an office manager at Generation Foods Too earning an annual salary of \$33,000. *Form I-864; Biographic Information Form*. There is no evidence in the record establishing that she will endure extreme economic hardship if her husband leaves the country. It is noted that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel states that the applicant’s wife is not able to return to the Philippines as she has established roots in the United States and would have extreme difficulties securing gainful employment in the Philippines. He claims that her return to the Philippines is tantamount to removal of a U.S. citizen.

There is no evidence in the record supporting counsel's assertion that the applicant's wife would have extreme difficulties in obtaining gainful employment in the Philippines. Furthermore, a long line of authorities state that while economic detriment is a factor for consideration, by itself it does not constitute extreme hardship. *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982), citing *Men Keng Chang v. Jiugni*, 669 F.2d 275, 279 (5th Cir. 1982) and *Mendoza-Hernandez v. Immigration and Naturalization Service*, 664 F.2d at 635, 638 (7th Cir. 1981). It is only when other factors such as advanced age, illness, family ties, etc. combine with economic detriment that deportation becomes an extreme hardship. *Matter of Anderson*, 16 I & N Dec. 596, 598 (BIA 1982). In this case, such other factors do not exist. There is no evidence of any illness in the applicant's family that requires medical treatment not available in the Philippines. There is no evidence that [REDACTED] does not have family ties in the Philippines. There is no evidence that the applicant will not be able to find any employment in the Philippines. 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). Thus, the additional factors needed to combine with economic detriment in order to categorize the hardship as extreme are unfortunately not present in this case. 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)).

Counsel asserts that [REDACTED]'s return to the Philippines is, in effect, removal of a U.S. citizen. As previously stated, a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. It is therefore [REDACTED]'s choice, although understandably a very difficult one to make, to either remain in the United States without her husband, or join him 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(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the respondent statutorily ineligible for relief, the AAO declines to discuss whether or not 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) 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.