

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY



FILE:



Office: LOS ANGELES, CA Date: MAY 08 2007

IN RE:



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, CA 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 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 procuring admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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 her family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of District Director*, dated October 6, 2005.

On appeal, counsel asserts that the district director did not thoroughly examine and analyze all of the facts, failed to balance the equities, misstated the law regarding family members of qualifying relatives, and erroneously applied principles and standards developed for relief from deportation and not waivers of inadmissibility. *Form I-290B Attachment*, received October 25, 2005.

The record includes, but is not limited to, counsel's brief, medical records for the applicant and her spouse, photographs of the applicant's family and the applicant's spouse's statement. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 1, 1982, the applicant procured admission into the United States with a passport and nonimmigrant visa listing an assumed name and date of birth. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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.

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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse

or parent of the applicant. Hardship to the applicant, the applicant's children, or the applicant's spouse's family members is not a permissible consideration in a section 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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).

Counsel asserts that the extreme hardship analysis used in the suspension of deportation context cannot simply be transferred to the section 212(i) waiver of inadmissibility context. *Brief in Support of Appeal*, at 15, dated October 24, 2005. The AAO notes that counsel provides no legal basis for this assertion.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to the Philippines or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event he relocates to the Philippines. The applicant's spouse states that his parents, two brothers, two sisters and two adult sons are in the United States. *Applicant's Spouse's Statement*, at 1-3, dated June 20, 2005. The applicant's spouse states that it would cause him pain to see the close bond between the applicant and their sons broken by separation, and that there is no chance that his sons will move to the Philippines. *Id.* at 2. The record does not, however, provide evidence, e.g. a medical or psychological evaluation, that would establish the pain that the applicant's spouse indicates he would feel if the applicant is separated from their sons as constituting an extreme hardship to him. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *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 notes that the applicant's spouse suffers from arthritis, high blood pressure and high cholesterol, and it is imperative that he take his medicine, watch his diet and see his doctors. *Brief in Support of Appeal*, at 7. The applicant's spouse states that he is only able to take care of himself as a result of medical insurance that he receives through his employment in the United States. *Applicant's Spouse's Statement*, at 3. Counsel states that the applicant suffers from high blood pressure, diabetes, arthritis and gout, and that given the applicant and her spouse's illnesses, advanced age, lack of medical insurance in the Philippines and limited financial resources, they will be unable to afford sufficient medical care or the necessities for everyday living. *Brief in Support of Appeal*, at 8. However, the applicant has provided no substantiating evidence that she or her spouse would be unable to obtain adequate medical care in the Philippines or the employment needed to support themselves. Counsel states that while the applicant's spouse speaks Tagalog and is familiar with the culture, he has not

resided in the Philippines for over twenty-five years and he has developed strong ties to the United States. *Id.* at 11. The AAO notes that relocation commonly creates emotional stress, but the record does not distinguish the stress that would be felt by the applicant's spouse from that experienced by other similarly-situated individuals. After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel contends that the district director failed to consider the effect that the applicant's spouse's advanced age and health conditions will have on his ability to supplement his wife's lost income in the United States. *Id.* at 7. The record reflects that the applicant is working full-time at \$8.50 per hour and that the applicant's spouse is working full-time at \$12.35 per hour. *Employment Letters*, dated March 8-9, 2005. Therefore, the applicant is contributing approximately forty-percent of the household income. Counsel asserts that any hardships to the applicant and the applicant's spouse's family will have a direct and severe impact on the applicant's spouse. *Brief in Support of Appeal*, at 8. Counsel states that the applicant will no longer be able to assist her spouse in caring for his sick or elderly parents, or to be part of their son's lives. *Id.* at 9. The record includes physician letters which detail the numerous medical problems of the applicant's spouse's parents including degenerative joint disease and chronic kidney disease. *Letters from P [REDACTED]*, dated April 7, 2005. Counsel references the district director's acknowledgement that the applicant's spouse provides his parents with a rent-free home, accompanies them to their numerous medical appointments, cooks for them, run errands for them and monitors their diets. *Brief in Support of Appeal*, at 9-10. However, there is no evidence that one or more of the applicant's siblings would not be able to assist him in caring for their parents. The record reflects that the applicant's spouse will face difficulties without the applicant, however, extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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 notes that 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 she 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. 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.