



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

MAY 15 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois, 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 (U.S.) 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 having procured admission into the United States by fraud or willful misrepresentation in September 1996. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that after carefully reviewing all of the evidence in the applicant's file, that neither individually or in the aggregate did the circumstances rise to the level of extreme hardship. The application was denied accordingly. *District Director's Decision*, dated January 24, 2005.

On appeal, counsel states that the director's decision ignored the evidence that the level of hardship the applicant's spouse will suffer does rise to the level of extreme hardship. Counsel also asserts that if the applicant's waiver application is denied, the applicant's spouse will suffer extreme hardship because she will have to choose between staying in the United States with her family and friends or accompanying the applicant to the Philippines. *Counsel's Appeal Brief*, undated.

The record indicates that in September 1996 the applicant stated on his application for a tourist visa that he had no relatives living in the United States when his spouse was living in the United States. In addition, he told the consular officer that he was traveling to the United States to visit a friend when he was really coming to live with his spouse. *Applicant's Sworn Statement*, dated August 28, 2000.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawful permanent resident spouse

and/or parent. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Philippines or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Philippines. In her affidavit, the applicant's spouse states that she has been living in the United States since 1991, working as a nurse at [REDACTED] in Chicago. The applicant's spouse states that it would be an extreme hardship for her to relocate to the Philippines because she is no longer a citizen there and, as a nurse, she would only be paid \$120 a month. The applicant's spouse submitted articles from the October 19, 2004 [REDACTED] entitled, "Filipino Nurses' Exodus" and the Philippine News.com website, "Philippine Health Care Falters as Nurses Conquer Global Job Market," which confirm her statements that an average salary for a nurse in the Philippines is \$120 a month. A third article from the May 17, 2003 *Asia Times*, "Nurse Exodus Plagues Philippines," indicates monthly pay rates for nurses range from \$75 to \$95 per month in rural areas to \$169 per month in most Philippine cities. Although these monthly salaries are low for living wage standards in the United States, the applicant has not shown that she would not be able to provide for herself in the Philippines on these wages. In addition she has not shown that her not having Philippine citizenship would preclude her from obtaining employment.

The applicant's spouse states that all of her relatives live in the United States, except for her only sibling, her brother. She states that her brother lives in the Philippines, but that he is an alcoholic and drug addict who resides in a rehabilitation clinic. The AAO notes that the record establishes that the applicant's spouse's step-daughter still resides in the Philippines, although she is the beneficiary of an I-130, Alien Relative Petition, and that she would remain in the Philippines if the applicant returns there. The applicant's spouse indicates

that she lived with her step-daughter and her in-laws during many of her step-daughter's most important developmental years and that they have a mother-daughter relationship. The applicant's spouse states that the closeness of her relationship to her step-daughter is second only to the closeness she shares with the applicant. She also states that she is the caretaker for her elderly father. The AAO notes that the record indicates that the applicant's spouse's father is listed as a dependant on her 2003 and 2004 tax returns. However, the applicant's spouse does not address the possibility of her father relocating to the Philippines with her. Therefore, the AAO finds that based on the current record, the applicant has not shown that his spouse would experience extreme hardship as a result of relocating to the Philippines.

The second part of the analysis requires the applicant to establish that his spouse would experience extreme hardship in the event that she remains in the United States. The applicant and his spouse have been married for thirteen years. The applicant's spouse states that she will suffer extreme emotional and financial hardship as a result of being separated from the applicant. To support his spouse's assertions regarding the emotional hardship she will suffer, the applicant submitted a psychological evaluation from Dr. [REDACTED]. Dr. [REDACTED] states that he met with the applicant's spouse on four different occasions, for over six hours, during the time period of September 20, 2000 to October 21, 2000. He states that the applicant's spouse is extremely emotionally attached to the applicant. He states that she is not emotionally attached to her father and other family because she left the Philippines at the age of 22 and there are many events in her life that they are not aware of. Dr. [REDACTED] also states that the applicant's spouse has a fear of being alone that stems from an episode of post-traumatic stress that she suffered after experiencing a stillbirth, when she was six months pregnant. The doctor states that if she is separated from the applicant, these feelings would be severely exacerbated.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on four interviews during a short period of time, one month. Accordingly, the conclusions reached in the report do not reflect that insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship. In addition, the applicant submitted no documentation to show that she suffered from post-traumatic stress after the stillbirth of her child. No medical documentation was submitted from that time period in her life.

The applicant's spouse also states that she desperately wants a child and she is not able to have any biological children. She states that her only hope at having a child is her step-daughter, [REDACTED] who is the beneficiary of an immigrant visa petition. If the applicant is removed from the United States it will effect [REDACTED] ability to come to the United States, causing the applicant's spouse more emotional hardship. The AAO notes that the applicant submitted no documentation to show that his spouse is unable to have biological children. Thus, the AAO finds that based on the current record, the applicant's spouse would not suffer extreme hardship as a result of being separated from the applicant.

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.

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(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.