



U.S. Citizenship
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H2

[REDACTED]

FILE:

Office: ATLANTA, GA

Date: MAY 30 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, Atlanta, Georgia, 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 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 on January 19, 2000. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that her spouse would suffer extreme hardship if she were denied adjustment of status. The application was denied accordingly. *Decision of the District Director*, dated July 28, 2005.

On appeal, counsel asserts that the applicant's waiver application was denied in error since the applicant has established through ample evidence that this denial would cause her U.S. citizen spouse extreme hardship. *Counsel's Brief*, not dated.

The record indicates that on January 19, 2000, the applicant presented a Filipino passport and B-2 Visitor's Visa in the name of [REDACTED] to gain entry into 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.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or in the event that he resides 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 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 her spouse in the event that he resides in the Philippines. The applicant's spouse states that it will be extremely difficult for him to find employment in the Philippines at the age of 61 years old. He states that he also feels that it will be difficult for the applicant to find employment in the Philippines. *Spouse's Statement*, dated August 17, 2005. Counsel contends that relocating to the Philippines is not a viable alternative for the applicant's spouse as it would be almost impossible for him to find a job and that any employment he did obtain would be unlikely to provide the income needed to cover their basic needs. *Counsel's brief*, not dated. The AAO notes that the record includes a State Department Report and an Amnesty International Report for the Philippines. Neither report is specific to the applicant's spouse's situation nor do they show that a person with the applicant's and/or the applicant's spouse's background could not find employment in the Philippines. The applicant's spouse and counsel make no other assertions regarding the impact of relocating to the Philippines. Thus, the AAO finds that the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

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 states that it would be emotionally devastating for the applicant's spouse to be separated from his companion of nine years. He states that this separation would be particularly hard because the applicant's spouse is still recovering from the emotional impact of two divorces and the death of several immediate relatives. Counsel states that the applicant's spouse relies on the applicant for moral and emotional support. *Counsel's Brief*, not dated. The applicant's spouse states that he has been emotionally suffering since the denial of the applicant's waiver application and is not able to focus at work and that his life is centered on his relationship and marriage with the applicant. He states that he recently lost two of his children, his parents and two brothers. *Spouse's Statement*, dated August 17, 2005. The applicant submitted a letter from Dr. [REDACTED] to support these assertions. Dr. [REDACTED] states that the applicant's spouse is very dependent on the applicant for most of his usual activities and that the applicant is needed for both improvement in his physical and mental health and well being. *Letter from Dr. [REDACTED]* dated August 10, 2005. Although the input of any health professional is respected and valuable, the submitted letter offers no diagnosis of the physical and mental conditions affecting the applicant's spouse, no indication as to the severity of these conditions, and no prognosis. Neither does it indicate what treatment the applicant receives at the clinic where he is a patient or the length of that treatment. Accordingly, the conclusions reached in the letter are of diminished value to a determination of extreme hardship.

Counsel states that in addition to the emotional suffering, the applicant's spouse will also suffer financially if he is separated from the applicant. *Counsel's Brief*, not dated. Counsel states that the applicant has constantly contributed to the financial stability of the household and that the applicant's spouse relies on the applicant's income to meet his monthly financial responsibilities. *Id.* The applicant's spouse states that financially it will be extremely difficult to meet his financial obligations on his salary alone. He states that he works as a Security Officer for US Protect at Mossy Air Force Base earning \$12.86 per hour. He states that his monthly expenses are approximately \$2500 per month and his income is only \$2455 per month. *Spouse's Statement*,

dated August 17, 2005. The applicant's spouse also asserts that if the applicant returns to the Philippines, he will be faced with the additional financial burden of maintaining a household there. *Spouse's Statement*, dated August 17, 2005. Although the AAO notes the concerns expressed by the applicant's spouse regarding his financial obligations if the applicant's waiver application is not approved, the record, as already discussed, fails to demonstrate that the applicant would be unable to obtain employment in the Philippines that would allow her to assist her spouse in meeting their financial obligations, including her expenses in the Philippines.

Counsel also states that the applicant's spouse's social life within his community and within his church will be severely disrupted if the applicant is forced to return to the Philippines and that the applicant's spouse fears for the applicant's safety and economic stability in the Philippines. *Counsel's Brief*, not dated. In his statement, the applicant's spouse expresses his concern for his wife's safety and well being in the Philippines because of the unstable social environment there where women are often attacked and raped. *Spouse's Statement*, dated August 17, 2005. In support of these safety concerns the applicant submitted the 2004 State Department Country Report for the Philippines and the 2005 Amnesty International Report for the Philippines. Again, these reports provide background on conditions in the Philippines but do not pertain to the applicant's specific situation or establish that she would be at risk if she returned to live there.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the current record does not distinguish his situation from that typically faced by individuals separated as a result of removal. Accordingly, the applicant has not established that her spouse would suffer extreme hardship if he remains in the United States following her removal.

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 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.