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FILE:



Office: LOS ANGELES DISTRICT OFFICE

Date:

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of the Philippines, was found 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the son of a United States citizen and United States permanent resident, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his parents.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his parents, the qualifying relatives, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's parents would suffer extreme hardship if the applicant were required to return to the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that he attempted to enter the United States on March 12, 1995 using the passport of a lawful permanent resident of the United States. He is therefore inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. The applicant does not dispute his inadmissibility. Rather, she is filing for a waiver of his inadmissibility.

The record contains several references to the hardship that the applicant's wife, daughter, and extended family would suffer if the applicant were to depart the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child, or a spouse who

is not either a United States citizen or lawful permanent resident. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's United States citizen father, and lawful permanent resident mother, are the only qualifying relatives, and hardship to the applicant, his wife, or their daughter cannot be considered, except as it may affect the applicant's mother and father.

Thus, the first issue to be addressed is whether the applicant's return to the Philippines would impose extreme hardship on his parents. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

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 Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien 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 United States 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) (citations omitted), the BIA held that:

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.

Additionally, the Ninth Circuit Court of Appeals has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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 (9<sup>th</sup> Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in

the assessment of hardship factors in the present case. 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 record reflects that the applicant's father is a sixty-two-year-old naturalized citizen of the United States. The applicant's mother is a sixty-two-year-old lawful permanent resident of the United States; she has been a permanent resident since 1997.

In his September 20, 2004 affidavit, the applicant's father states that he has lived in the United States since 1977; that he is currently unemployed; that he suffers from hypertension and hyperglycemia, which would worsen if he were to return to the Philippines, as his health is maintained via routine medical checkups and prescription and over-the-counter medication that is available through his health insurance; that he would lose his health insurance coverage if he were to return to the Philippines; that his poor health would be worsened in the Philippines because the government lacks the will or desire to control pollution; that he has extensive community ties in the United States; that all of his children are in the United States; that his two brothers and sister are in the United States; that his nieces and nephews are in the United States; that he would be unable to obtain employment in the Philippines that would allow him to purchase health insurance; and that, if he were to remain in the United States without the applicant, he would be "heart-broken at the very least," as he would miss the applicant, his daughter-in-law, and his granddaughter.

In her September 19, 2004 affidavit, which was executed while she was vacationing in the Philippines, the applicant's mother states that she suffers from acute coronary syndrome, stage two hypertension, and mixed hyperlipidimia; that her health would deteriorate if she were to move to the Philippines, as she would not have access to health insurance to ensure access to preventive health care; that she would have no realistic opportunity for employment in the Philippines due to her age and lack of work experience; that all of her financial support is derived from her children in the United States; that she has extensive community ties in the United States, which would be severed if she were to leave; that all of her children, nieces, and grandchildren are in the United States; and that if she were to remain in the United States without the applicant, she would miss him terribly.

The record also contains a "Medical Certificate" from a physician in the Philippines, dated July 20, 2004, regarding treatment the applicant's mother received on June 21, 2004 for acute coronary syndrome, stage two hypertension, and mixed hyperlipidimia.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); [REDACTED] (holding that separation of family members and financial difficulties alone do not establish extreme hardship); [REDACTED]

U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The Ninth Circuit Court of Appeals has stated that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also that, "[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." (citations omitted); *93 (9th Cir. 1998)* (citations omitted). *See also* (remanding to the Board of Immigration Appeals (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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy").

In the instant case, the applicant is required to demonstrate that his mother and father would face extreme hardship in the event the applicant is required to return to the Philippines, regardless of whether they accompany him to the Philippines or remain in the United States.

The record, reviewed in its entirety and in light of the cited above, does not support a finding that the applicant's mother and father will face extreme hardship if the applicant returns to the Philippines. If they remain in the United States without the applicant, the record fails to establish that they would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship she

would face would be any greater than that normally be expected upon separation. The record contains no documentary evidence to demonstrate that the applicant's father has received any medical attention for his stated health conditions. Nor does the record establish that the applicant's mother or father would be unable to manage their daily affairs in the applicant's absence if they were to remain in the United States without him. Going on record without supporting documentary evidence is not sufficient for purposes 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)). While the record contains a "medical certificate" from the Filipino doctor regarding the applicant's mother's health conditions, the record contains no evidence that she has received regular attention for these matters in the United States. Nor has the applicant established why his parents' other adult children and family members, who are claimed to live in the United States, would be unable to assist the applicant's parents in the applicant's absence. The presence of these relatives in the United States further diminishes the claim that separation from the applicant would be harder for her parents than for other parents in similar situations.

While counsel asserts that the applicant's mother and father would experience extreme hardship because they state that the family is extremely close and that they would be heartbroken without their son, the record does not establish that they would be any more heartbroken than other parents would be at the prospect of a son's deportation or removal. Further, the AAO finds counsel's statement that, due to their advanced age (62), the applicant's parents may never see the applicant again if he relocates to the Philippines while they remain in California, to lack support, as the AAO notes that the applicant's mother was vacationing in the Philippines at the time her affidavit was prepared.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); [REDACTED] (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the district director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's parents would suffer hardship beyond that normally expected upon the removal of a son or daughter.

Finally, the AAO turns to counsel's assertion that the District Director abused her discretion by improperly applying the term "extreme hardship" based upon principles established in the context of suspension of deportation and section 212(h) of the Act cases. Counsel states that, as the present case involves immigration fraud and not criminal acts, the hardship analysis developed for suspension of deportation and 212(h) cases "cannot simply be transferred to cases involving INA § 212(i)."

The AAO disagrees, and notes that *Matter of Cervantes* is used in cases involving waivers of inadmissibility as guidance for what constitutes extreme hardship, and that this cross application of standards is supported by

the BIA. *Matter of Cervantes-Gonzalez*, 22 I & N Dec. 560, 565 (BIA 1999), the BIA, assessing a section 212(i) waiver of inadmissibility case, wrote:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion . . . . [S]ee . . . *Hassan v. INS*, 927 F.2d 465, 467 (9<sup>th</sup> Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

In, *In Re Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001), a section 240A(b) of the Act, 8 C.F.R. § 240.20, cancellation of removal case, the BIA states:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing "extreme hardship" for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing "exceptional and extremely unusual hardship" are essentially the same as those that have been considered for many years in assessing "extreme hardship," but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

(Publication page references not available on Westlaw). (section III of decision).

In, *In Re Kao-Lin*, 23 I & N Dec. 45 (BIA 2001), a suspension of deportation case, the BIA referred to the factors listed in *Matter of Anderson*, *supra*, in making a determination of extreme hardship, stating in a footnote that:

The standard for "extreme hardship" that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

(Publication pages not available on Westlaw. Footnote 3). (and section III of decision)

Accordingly, the AAO disagrees with counsel's assertion that the District Director applied an erroneous extreme hardship analysis.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his parents would suffer hardship unusual or beyond that normally expected upon removal of a son or daughter. As noted previously, the common results of deportation or exclusion

are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.