

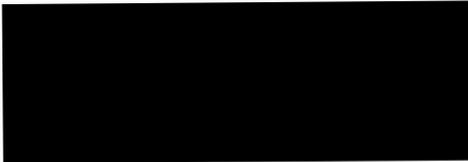
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Date: **APR 29 2008**

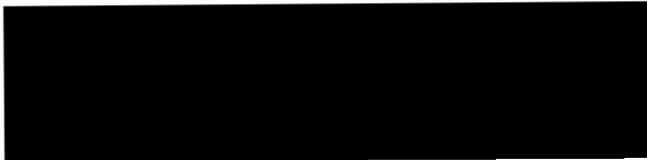
IN RE:



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.

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, Cleveland, Ohio, 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 March 4, 1993. The applicant is married to a U.S. citizen and has a U.S. citizen child, and two U.S. citizen stepchildren. She 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 factors present in the record did not elevate the applicant's claim to the realm of a detrimental loss from which his spouse would never recover. The application was denied accordingly. *Decision of the District Director*, dated July 23, 2005.

On appeal, the applicant states that while in the Philippines she was given money by a married couple in New Jersey and was told where she should go to obtain a birth certificate and passport for entry into the United States. She states that the purpose of her coming to the United States was to be a housemaid for the family in New Jersey and that all of her paperwork was locked up and kept from her for the six years that she was employed by this family. She states that in December 1999 her future husband traveled to New Jersey to meet her and that she returned with him to Columbus, Ohio. She requests that her waiver application be approved so she can stay in the United States with her family. *Applicant's Affidavit of Explanation*, undated; *Applicant's Appeal Letter*, dated August 22, 2005.

The record indicates that on March 4, 1993, the applicant presented a Filipino passport and C-1 visa in the name of Stella Estomo in an attempt 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 experiences or her child

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.

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 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.

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). 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 and 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.

In his affidavit, the applicant's spouse explains that he would suffer extreme hardship if he relocated to the Philippines. *Spouse's Affidavit*, dated May 9, 2002. He states that the current political situation in the Philippines poses an inherent danger to U.S. citizens. He states that he and his small child would be in imminent danger if they relocated and he fears he would suffer persecution by the citizens of the Philippines. He states that relocating to the Philippines would jeopardize his life as well as the life of his young son. *Id.* In support of the applicant's spouse's concerns, the record contains a public announcement from the U.S. Embassy in Manila, dated April 18, 2002. The announcement reports violent incidents experienced by U.S. citizens in the Philippines and cautions against travel to certain areas.¹ The applicant's spouse also states that he and his son only speak English and are unfamiliar with the language and lifestyle of the Philippines. He states that this language barrier would impact his ability to find employment and adequate health care for his family. He also expresses concern for the lack of medical care and educational opportunities for his son. The

¹ The AAO notes that the U.S. Department of State continues to warn U.S. citizens against travel to the Philippines, advising that security threats exist throughout the Philippines. *Travel Warning, Department of State*, issued February 13, 2008.

applicant's spouse states that he has no family ties outside the United States and has two other children from previous relationships whom he sees on a regular basis. He states that if he relocated to the Philippines he would not be able to keep his close relationship to these two children and would not be able to support them financially. The record contains copies of the applicant's spouse's lease agreement and tax returns, which list his daughter Brooklynn as a resident in the house. The record also includes a letter from Brooklynn's mother and a divorce decree stating his visitation and support obligations for his other daughter, [REDACTED]. Brooklynn's mother, [REDACTED] states that she and the applicant's spouse lived together for seven years and had a daughter in 1997. *Letter from [REDACTED]*, dated November 16, 2001. She states that the applicant's spouse shares in the medical expenses and other needs of their daughter. She also states that they share custody of her, participate in all her school activities and consult each other on all major decisions concerning her life. *Id.* The record includes a medical note for Brooklynn, which states that she has a history of febrile seizures and has aggressive reactions to insect bites. *Note from [REDACTED]*, dated August 27, 2001.

The applicant's spouse states that his relocation to the Philippines would result in the loss of his business. The applicant's spouse states that he owns a successful business in the United States and would not be able to find comparable employment in the Philippines. *Spouse's Affidavit*, dated May 9, 2002. The record contains the applicant's spouse's resume, which shows that he is the owner of a business that offers cleaning and painting services and earns \$115,000 per year in business income. The record also includes the business' registration certificate and proof of a worker's compensation payment.

The AAO finds that the country conditions in the Philippines, the applicant's spouse's length of residence in the United States, and his family and financial ties in the United States establish that he would suffer extreme hardship as a result of relocating to the Philippines.

However, the applicant's spouse has not shown that he would experience extreme hardship if he were separated from the applicant. The applicant's spouse states that the applicant is the primary care-giver for their son and that because of his business he is unable to provide the care and support that their son needs. He also expresses concern for the mother-child relationship between the applicant and their son and states that both would suffer from the separation for the rest of their lives. *Spouse's Affidavit*, dated May 9, 2002. The AAO acknowledges the concerns expressed by the applicant's spouse regarding the impact of the applicant's removal on his son. It notes, however, that, as previously discussed, the applicant's child is not a qualifying relative in this proceeding. Accordingly, any harm he might suffer as a result of his mother's removal is considered only to the extent that it affects his father, the qualifying relative. As the record does not demonstrate that the hardship experienced by the applicant's child would result in extreme hardship to her spouse, it fails to establish that he would suffer extreme hardship if he remained in the United States following removal.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that the applicant's spouse would face the unfortunate disruptions and difficulties that arise whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation nearly always results in considerable hardship to individuals and families, in specifically limiting

the availability of a waiver of inadmissibility to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

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.