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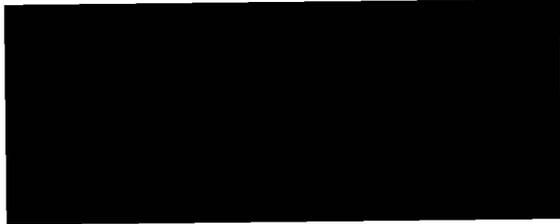


U.S. Citizenship
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Services

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FILE:



Office: MANILA, PHILIPPINES

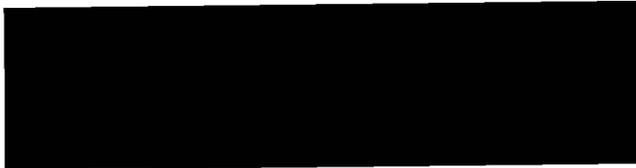
Date: NOV 04 2008

IN RE: Applicant:



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 PETITIONER:



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 "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, Philippines, 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. He was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is the derivative beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his wife's behalf. He presently seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may be admitted to the United States as a lawful permanent resident.

The officer in charge found the applicant to be inadmissible based on his misrepresentations on his visa application in 1998. He further found that the applicant was ineligible for a waiver finding that his lawful permanent resident spouse would not face extreme hardship.

On appeal, the applicant, through counsel, submits a brief contending that his spouse would face extreme hardship should he not be allowed to join her in the United States. Specifically, the applicant cites to his wife's "weak lungs" and her responsibility to her children and aging father. The applicant claims that his spouse would experience extreme emotional and financial hardship.

Section 212(a)(6)(C)(i) of the Act provides:

In general.--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, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien"

The officer-in-charge found the applicant inadmissible based upon his submission of a fraudulent 1997 income tax return in connection with a visa application in 1998. The applicant does not dispute this finding. Therefore, the AAO finds that the applicant is inadmissible as charged. The question remains whether the applicant qualifies for a waiver.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's lawful permanent resident spouse. Hardship to the applicant's children, or to the applicant himself, is therefore not a relevant consideration.

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. 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. The BIA has held:

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 applicant's spouse, [REDACTED], is a lawful permanent resident of the United States. She has been residing in the United States since 2005, with her two children and her father. The applicant's spouse's father suffers from hypertension, coronary artery disease, high cholesterol, diabetes and Hepatitis C. The applicant's spouse is employed full-time at the Fort Bend County's Sheriff's Office. She claims that she is responsible for her father's care, as well as her children's. She and the applicant have been married for 14 years.

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 is denied the waiver. The AAO notes that the record does not contain sufficient evidence of the applicant or his spouse's financial circumstances. The record indicates that the applicant's spouse is well-employed, full-time. It further indicates that she has family in the United States, including her father and siblings. The record does not support the applicant's claim that she cares for her father, or that her father requires particular medical care. The record only contains a letter from the applicant's father-in-law's physician listing his medical conditions. The record also does not contain any evidence of the applicant's spouse's "weak lungs" or any other medical condition. Given the applicant's spouse's employment and extended family ties in the United States, the AAO cannot find that the separation from the applicant would amount to financial or emotional hardship beyond the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

Although the AAO recognizes that separation from the applicant would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." While the AAO has carefully considered the emotional impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. See *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "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"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse due to the separation from the applicant rises to the level of extreme.

The AAO further notes the record suggests that the applicant's spouse is unwilling to return to the Philippines and reunite with the applicant. In this regard, the AAO first notes that the statute does not require the applicant's spouse to relocate. The AAO further notes that a "lower standard of living and the difficulties of readjustment to that culture and environment . . . simply are not sufficient" to demonstrate extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986). The AAO agrees that the applicant's spouse's decision to remain in the United States is a matter of personal choice.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. 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 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (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). 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 therefore finds that the applicant failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.