

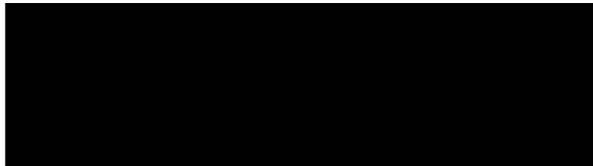
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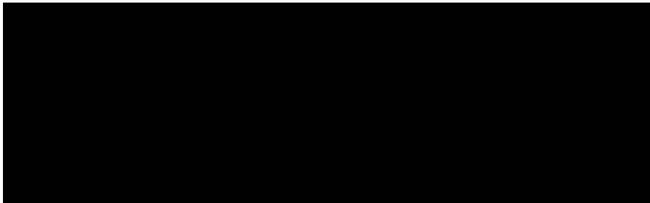
FILE: Office: LOS ANGELES (SANTA ANA) Date: APR 09 2009

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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, 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 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 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 1, 2006.

On appeal, counsel for the applicant contends that the applicant's husband and mother will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated October 27, 2006.

The record contains a brief from counsel in support of the appeal; a statement from the applicant's mother; a copy of the applicant's mother's naturalization certificate; a statement from the applicant's husband; documentation in connection with the applicant's husband's employment; bills, tax, and financial records for the applicant and her husband; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; a copy of the applicant's husband's birth certificate, and; information regarding the applicant's entry to the United States using a fraudulent passport and identity. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant entered the United States using a false identity and a passport that belonged to another individual, her sister-in-law. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act 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 does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband or mother. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and 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.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband or mother would possibly remain in the United States if the applicant departs. Separation of family will be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that the applicant's husband and mother will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel* at 1. Counsel states that the district director failed to consider all elements of hardship in aggregate, and that when all instances of hardship are considered together in the instant case, they constitute extreme hardship to the applicant's husband and mother. *Id.* at 4, 6-7. Counsel contends that the district director cited cases that are not binding on the present matter. *Id.* at 4-5.

Counsel explains that the applicant's husband is employed as a Senior Special Investigator at a rate of \$5,228.24 per month. *Id.* at 8. Counsel asserts that denial of the waiver application would compel the applicant's husband to maintain two households, yet his current income is not sufficient to meet this need. *Id.* Counsel contends that the employment market in the Philippines is poor, and that the applicant would have difficulty securing a job there. *Id.* Counsel states that the applicant's husband would also have difficulty securing employment in the Philippines, in part due to his lack of language skills. *Id.* at 9. Counsel contends that the applicant's husband would endure extreme poverty, as he would not have employment in his field and he would have to work as a farmer. *Id.*

Counsel asserts that separation would be devastating for the applicant's family. *Id.* at 11. Counsel states that the applicant's mother has strong ties to the United States. *Id.* Counsel provides that conditions in the Philippines are dangerous. *Id.* at 12.

Counsel cites the decision of the Board of Immigration Appeals in *Matter of Savetamal*, 13 I&N Dec. 249 (BIA 1969), and contends that the facts in the present matter are similar to those under consideration in the referenced matter. *Id.* at 8-9.

The applicant's husband stated that he was born in Youngstown, Ohio. *Statement from the Applicant's Husband*, dated June 14, 2006. He indicated that he has a brother in Georgia and a sister in California. *Id.* at 1. He stated that he has resided in the United States for his entire life, and in California since 1968. *Id.* The applicant's husband described his training and career path in security services, including employment with the Fairview Development Center since 1984. *Id.* at 1-2. He provided that he met the applicant in May 2003 and they married on June 9, 2004. *Id.* at 2-3. The applicant's husband explained that he has never been to the Philippines and he has no knowledge of the language, culture, or customs there. *Id.* at 3. He provided that he cannot uproot his life in the United States, thus he would be faced with separation from the applicant should the present waiver application be denied. *Id.* He expressed that he would endure significant emotional hardship as a result. *Id.*

The applicant's mother stated that she was born in the Philippines, and she became a U.S. citizen on May 26, 1995. *Statement from the Applicant's Mother*, dated June 10, 2006. She indicated that she resides with her daughter, [REDACTED], in Aliso, California. *Id.* at 1. She stated that she underwent successful triple-bypass surgery and she wishes to have her daughters, including the applicant, with her. *Id.* She explained that she relocated from Arizona to California to be with the applicant. *Id.* She provided that she would suffer emotional hardship if the applicant is compelled to depart the United States. *Id.* She stated that she cannot travel back to the Philippines, thus she would be separated from the applicant should the present waiver application be denied. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. Counsel contends that the applicant's U.S. citizen mother will experience extreme hardship if the applicant is compelled to depart the United States. However, the applicant has not submitted sufficient documentation to show that her mother would experience hardship that is greater than that commonly expected when family members are separated or relocate due to inadmissibility. The applicant's mother resides with the applicant's sister, thus the applicant has not shown that her mother depends on her for her

daily needs. The applicant has not asserted or shown that her mother receives or requires her economic support. The applicant's mother stated that she would experience greater hardship due to her health problems, including triple-bypass surgery. However, the applicant has not submitted any medical documentation to show her mother's current health or previous procedures. Nor has the applicant provided medical documentation to show that her mother is unable to travel to the Philippines should she choose. As the applicant's mother is a native of the Philippines, it is assumed that she would not endure the challenges of adapting to an unfamiliar language and culture should she visit or return there to reside with the applicant.

The applicant's mother suggests that she would suffer emotional hardship should she be separated from the applicant. However, the applicant has not distinguished her mother's emotional hardship from that which is commonly experienced by those separated from family due to inadmissibility. 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.

Based on the foregoing, the applicant has not submitted adequate documentation to show by a preponderance of the evidence that her mother will experience extreme hardship if the present waiver application is denied.

The applicant has not shown that denial of the present waiver application will result in extreme hardship to her husband. It is observed that the applicant's husband earns substantial income, equivalent to approximately \$62,378 per year. The applicant has not asserted or shown that her husband depends on her for economic support, or that he would be unable to meet his needs in her absence. Counsel contends that the applicant's husband would be compelled to maintain two households should the applicant relocate to the Philippines. Yet, the applicant has not provided adequate documentation to show that she would be unable to secure employment in the Philippines to support herself. Nor does the record contain documentation to show the applicant's estimated expenses in the Philippines, such that the AAO can assess her needs and determine if contributions from her husband are likely needed. Thus, the applicant has not established that her husband would experience significant economic consequences should the applicant depart the United States and he remain.

The applicant's husband expressed that he is close with the applicant and that he does not wish to be separated from her. However, the applicant has not distinguished her husband's emotional hardship from that which is commonly experienced by spouses who are separated due to inadmissibility. The AAO acknowledges that family separation in the present case is likely, and that hardship will result. Yet, the record does not contain evidence that the applicant's husband would encounter unusual emotional suffering. See *Hassan v. INS*, 927 F.2d at 468.

The applicant has not identified other elements of hardship that her husband would endure should she depart the United States and he remain without her. The AAO has considered all present elements of hardship both separately and in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband would experience extreme hardship should he remain in the United States without her.

The applicant's husband indicated that he cannot relocate to the Philippines. The AAO acknowledges that relocation to the Philippines would constitute significant hardship for the applicant's husband, largely due to the facts that he has resided in the United States for his entire life, he has family ties in the United States, he has engaged in steady employment with the same employer for approximately 25 years, he has never traveled to the Philippines, he is not familiar with Philippine language and culture, and he would reasonably face economic challenges in the Philippines. However, in order to establish eligibility for a waiver under section 212(i)(1) of the Act, the applicant must show that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. Section 212(i)(1) of the Act. As the applicant has not shown that her husband would experience extreme hardship should he remain in the United States without her, she has not shown that denial of the application would result in extreme hardship to her husband. *See id.*

Counsel cites the decision of the Board of Immigration Appeals (BIA) in *Matter of Savetamal*, 13 I&N Dec. 249 (BIA 1969), and contends that the facts in the present matter are similar to those under consideration in the referenced matter. *Id.* at 8-9. However, in *Matter of Savetamal* the BIA assessed whether an applicant established "exceptional hardship" to her spouse within the meaning of section 212(e) of the Act. Thus, the standards of hardship in the present matter and the cited matter are not the same. Further, the BIA noted that the applicant in *Matter of Savetamal* had a young daughter which would create additional hardship for her husband. *Matter of Savetamal*, 13 I&N Dec. at 249. In the present matter, the applicant and her husband do not have children, thus the facts of the present matter can be distinguished from those in *Matter of Savetamal*. The AAO has examined *Matter of Savetamal* as a general guide for elements of hardship that should be considered, yet the case does not serve as precedent to show that the applicant's husband in the present matter will experience extreme hardship should the present waiver application be denied.

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)(1) 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.