



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: PHILADELPHIA, PA Date: APR 24 2009

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.

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 Acting District Director, Philadelphia, Pennsylvania, 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen 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 her United States citizen spouse and their two children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 9, 2006.

On appeal, counsel contends that prior counsel failed to submit sufficient evidence in support of the applicant's Form I-601 application. Current counsel also submits additional evidence in support of the application and states that this evidence establishes that the applicant's spouse will experience extreme hardship if a waiver is not granted. *Brief in Support of Appeal*, dated September 12, 2006.

The record contains a brief from current counsel as well as: a letter from The Children's Hospital of Philadelphia regarding the applicant's infant son's health; general country conditions information; country conditions information regarding asthma and air quality in the Philippines; medical documents regarding the applicant's spouse's asthma; a statement from the applicant; an extreme hardship letter from the applicant's spouse; a statement from prior counsel; financial and employment documents for the couple; and documents submitted with previous immigration applications. 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.

The record reflects that the applicant entered the United States on or about November 24, 1998 using a passport that she purchased that bore the name of an individual named [REDACTED]. The applicant states that she used the passport to travel to Vancouver, Canada where she went through U.S. Immigration before traveling to Chicago. *Sworn Statement of [REDACTED]*, dated June 10, 2003.

Matter of S- and B-C-, 9 I&N Dec. 436 (BIA 1960; AG 1961) outlines the elements of a material misrepresentation, as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

Based on this standard, the applicant's misrepresentation was material. The applicant misrepresented her identity to immigration officials in order to procure the benefit of entry to the United States. In such an instance, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to her, and whether any United States government agencies possess information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. In the present matter, when the applicant misrepresented her identity, she cut off these material inquiries. Specifically, the inspecting officer was unable to determine whether the applicant was the true owner of the passport and visa, whether she possessed valid entry documents of her own, or whether the United States possessed information that has a bearing on the applicant's eligibility for entry. Because the applicant made a willful misrepresentation, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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 (BIA) 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.

The BIA has also 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to the applicant's qualifying relative, in this case her husband, must be established in the event that he accompanies the applicant or in the event that he remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines to remain with the applicant for medical, emotional and financial reasons. *Brief in Support of Appeal*, dated September 12, 2006.

Counsel states that the applicant suffers from allergies and has asthma. *Brief in Support of Appeal*, dated September 12, 2006; *Clinical Notes of Family Practice Associates*, dated August 15, 2006. As evidence that these symptoms will of this worsen if the applicant relocates to the Philippines, counsel submits country conditions information. This information states that work absence due to asthma in the Philippines is the highest in all of Asia. *Asthma control in adults in Asia-Pacific, found on Pubmed*, dated November 10, 2005. Air pollution has affected the health of citizens of Manila such that the United Nations Environment Program and the World Health Organization have found that air pollution in the city poses serious health problems to its residents. *Lethal inhalation in the Philippines*, by [REDACTED] dated January 30, 2003. Air pollution in Manila contributes to morbidity and mortality due to respiratory and cardiovascular diseases and high childhood asthma rates. Fine particulate matter in pollution contributes to events of respiratory symptoms and diseases, and air pollution in general causes the affects of asthma in worsen. *Heath Impacts of Air Pollution, published by the Department of Health of the Republic of the Philippines*, dated June 2004; *How Air Pollution Affects Asthma, National Jewish Medical Research Center*, dated June 21, 2000' *Air pollution spurs allergies, asthma*, by [REDACTED] of MSMBC online, dated November 4, 2003.

Counsel also submits evidence that one of the applicant's son's had recurrent gluteal abscesses, for which he required surgery in March of 2006. By seven months of age, he was on his fourth antibiotic regimen and the abcess had not healed. *Letter from the Children's Hospital of Philadelphia*, dated June 23, 2006. He further suffered from atopic dermatitis and possible food allergies as well as hypogammaglobulinemia. *Id.* Counsel has submitted country conditions information that indicates that though medical care is available in major cities in the Philippines, even the best hospitals may not meet the same standards for medical care, sanitation and facilities as those found in the United States. [REDACTED] *section on Travel Safety in the Philippines*, dated September 8, 2006. Though the applicant's children are not qualifying relatives, hardships regarding his son's medical condition will affect the applicant's spouse, who is a qualifying family member. Therefore, the applicant's son's medical condition is discussed here.

Counsel has also stated that the applicant's spouse will experience financial difficulties if he relocates to the Philippines. The applicant's spouse has stated that he fears he will not be able to

gain employment due to language barriers and his inability to work in a tropical climate. *Statement from* [REDACTED] not dated.

Counsel asserts that the applicant's husband is a United States citizen by birth who is close with his family, all of whom reside in the United States. *Brief in Support of Appeal*, dated September 12, 2006. The applicant's spouse has not traveled outside of the East Coast of the United States. He has also never been on an airplane and is afraid of flying and all of his immediate family, with whom he has close relationships, counsel reiterates, reside in the United States. *Id.* Travel to the Philippines would be unaffordable and difficult for the applicant's spouse's family members and therefore the applicant's spouse feels that he would not be able to visit with his immediate family often if he were to relocate to the Philippines. *Id.*

Counsel also states that economic conditions in the Philippines is poor, that terrorist groups exist in the Philippines and kidnappings of U.S. citizens in the Philippines have resulted in a travel warning being issued by the Department of State. *Travel Warning, Department of State's Bureau of Consular Affairs*, dated September 8, 2006. Counsel asserts that it would also be very difficult for the applicant's spouse to raise his children in the Philippines, as they would struggle financially and would not obtain quality education. *Brief in Support of Appeal*, dated September 12, 2006.

Counsel has submitted evidence that the applicant's spouse does not speak any of the languages spoken in the Philippines; that he would find difficulty obtaining employment in the Philippines; that his son suffers from medical conditions; that his asthma and allergies would worsen if he were to reside in the Philippines; that medical care in the Philippines is not comparable to that found in the United States; that the applicant's spouse has not traveled extensively in the United States and he has not ever been on an airplane; and that terrorists have targeted United States citizens in the Philippines. When considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship if he were to relocate to the Philippines to reside with the applicant.

However, although counsel offers evidence of extreme hardship to the applicant's husband if he relocates to the Philippines, on appeal, counsel does not address whether the applicant's spouse would experience extreme hardship if he remains in the United States maintaining his employment, close proximity to family members and access to medical care in the United States. Prior to appealing the director's decision, the applicant's spouse submitted an undated statement in which he asserted that he loves his wife and that being separated from her would cause him emotional and financial hardship and that he could not imagine being separated from her. *Statement from* [REDACTED]

not dated. The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility. Though financial documents including tax documents and bank records were submitted, counsel did not indicate how the applicant's spouse's finances would be affected if the applicant were to relocate to the Philippines without her spouse, nor did counsel provide details regarding financial obligations that would not be met as a result of the loss of the applicant's income. The record, therefore, does not contain sufficient evidence to establish that the applicant's spouse will be unable to maintain his financial situation if the applicant departs from the United States. Moreover, the U.S. Supreme

Court 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 AAO recognizes that the applicant's husband will endure difficulties as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

Though the AAO finds the applicant's spouse would experience hardship if he were to relocate to the Philippines, where he does not speak the language, where the air pollution will contribute to his allergies and asthma and where he and the applicant may not receive the same medical treatment for their son that they would receive in the United States, on appeal counsel did not address whether the applicant's spouse would experience hardship if he were to remain in the United States maintaining his current employment and ties to his family. The AAO notes the statements made by the applicant's spouse prior to appealing the director's decision regarding financial and emotional difficulties he would experience if he were to remain in the United States and a waiver was not granted. However, documentation in the record fails to establish that difficulties he would experience rise to the level of extreme hardship if a waiver is not granted and he remains in the United States separated from the applicant. 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(a)(6)(C) 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.