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U.S. Citizenship and Immigration Services
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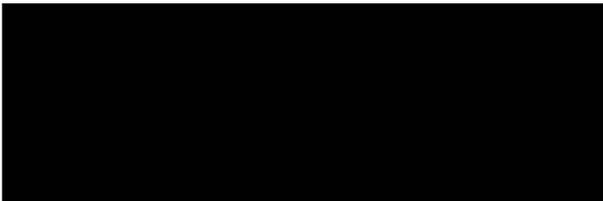
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines, the husband of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application. On appeal counsel did not contest the finding of inadmissibility, but contended that the evidence is sufficient to show extreme 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.

In a sworn statement, dated July 22, 2005, the applicant stated that, on June 10, 1991, he entered the United States using the name [REDACTED], after paying \$5,000 for a U.S. visa. The record contains a Philippine passport in the name of [REDACTED]. The passport contains what appears to be a photograph of the applicant. It also contains a stamp indicating that it was used to enter the United States on June 9, 1991.

The applicant's admission, and the evidence in the record, taken together, is sufficient to show that the applicant presented either a counterfeit or altered passport and visa to gain entry into the United States, misrepresenting himself as the person named on the passport. The AAO finds, therefore, that the applicant committed fraud as contemplated in section 212(a)(6)(C)(i) of the Act, committed misrepresentation as contemplated in that same section, and is therefore inadmissible. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) provides, in pertinent part:

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 . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of 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 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).

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).

In a statement dated June 3, 2005 the applicant's wife stated that she and her husband, if forced to live apart for a protracted period, would suffer "emotional, mental, physical and financial pain." She stated that they cannot bear to be apart, and that, if the applicant were forced to return to the Philippines, she would be obliged to support him there because "[t]he economic situation in the Philippines is not stable" The applicant's wife further stated that she and her husband are trying very hard to have children, which attempt would be thwarted if the applicant were removed to the Philippines, which removal ". . . would prevent [the applicant's wife] from fulfilling the greatest dream of [her] life." The applicant's wife was then 45 years old.

Neither the applicant, nor the applicant's wife, nor counsel has discussed what hardship, if any, the applicant's wife would experience should she relocate in the Philippines. As such, the applicant has not demonstrated that his spouse would suffer extreme hardship there.

The record contains a report, dated July 13, 2006, from [REDACTED], a psychologist. Dr. [REDACTED] stated that he interviewed the applicant's wife on July 12, 2006 "for a psychological evaluation and report which will be used in this proceeding." [REDACTED] stated that the applicant's wife wept several times during the interview, and that she is panic-stricken at the thought that the applicant might have to leave the United States, which has caused her to become depressed and anxious, with symptoms including insomnia, loss of weight, difficulty focusing and concentrating, sadness, crying spells, loss of libido, and chronic anxiety.

[REDACTED] diagnosed the applicant's wife with Adjustment Disorder with Mixed Anxiety and Depressed Mood, evidenced by marked distress that is in excess of what would be expected from exposure to the stressor or significant impairment in social, occupational, or academic functioning. [REDACTED] stated his opinion that the disorder is a direct result of learning that the applicant may have to return to the Philippines.

Nothing in the record suggests that the applicant's wife has received receiving regular psychiatric care. Rather, the evidence suggests that she consulted with a psychologist once as necessary to obtain a letter for use as evidence in the instant case.

That report contains no evidence that the psychologist conducted therapy with the applicant's wife either before or after their meeting. Moreover, the record does not show that either the psychologist recommended that the applicant's wife undergo psychiatric treatment or psychological therapy to relieve her symptoms or resolve her anxiety.

Consequently, the psychologist's report is of limited probative value and does not demonstrate that the applicant's wife is experiencing or will experience emotional hardship greater than that that is normal in similar situations.

Other documents in the record pertain to the applicant's wife's treatment for **hyperthyroidism**, including a bill for an emergency room visit on April 12, 2005, and letter from [REDACTED] a medical doctor. [REDACTED] stated that the applicant's wife had received radioactive iodine treatment, and was advised not to become pregnant for at least a year. There is no indication that the applicant's removal would occasion any additional hardship to the applicant's wife, beyond what it would occasion to a person with a normal thyroid.

A single letter in the record, dated July 20, 2006, from [REDACTED] a medical doctor specializing in internal medicine and geriatrics, refers to treating the applicant's wife for hyperthyroidism and depression, but includes no further detail.

The single sentence in the letter from [REDACTED] provides no indication of the seriousness or cause of the depression from which the applicant's wife may be suffering. The evidence in the record is insufficient to show that the emotional turmoil that may be occasioned to the applicant's wife is any more severe than what would be expected to result from deportation of a spouse.

Evidence in the record, including tax returns, Form W-2 Wage and Tax Statements, and a letter from the applicant's wife's employer demonstrate that the applicant's wife has been steadily employed. The employer's letter, dated May 17, 2005, states that the applicant's wife was hired on September 16, 1985 and that her base annual salary was then \$87,568.

Clearly, the applicant's wife is capable of supporting herself. Although she stated summarily that she would be forced to support the applicant if he returns to the Philippines, asserting that the economy in the Philippines is "not stable," the record contains no evidence to support the applicant's wife's assertion that her husband would be incapable of supporting himself in the Philippines.

Although the statements by the applicant and his spouse are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). The record appears to indicate that the applicant lived in the Philippines from his birth in 1964 until he departed for the United States in 1991, and the evidence is insufficient to show that he cannot support himself there.

The inability of the applicant's wife to become pregnant if he is removed from the United States and she remains is not an extraordinary hardship, rather it is a hardship to be expected in such a situation.

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 faces extreme hardship if the applicant is refused admission. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has a very loving and devoted wife who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

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). “[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 therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.