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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: SAN FRANCISCO, CA

Date: FEB 02 2009

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.

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and she is seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 5-6, dated September 28, 2005.

On appeal, counsel asserts that the district director erred in finding that the applicant has not established extreme hardship to her U.S. citizen spouse, noting that the district director abused his discretion by failing to consider all of the extreme hardship factors presented in the case. *Form I-290B*, received October 12, 2005.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, the applicant's statement, a psychological evaluation of the applicant's spouse, and country conditions information on the Philippines.

The record reflects that on July 28, 2000, the applicant used a fraudulent passport and visa to procure admission to the United States. As a result of her prior misrepresentation, the applicant is inadmissible to 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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in the Philippines or remains 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 first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in the Philippines. Counsel states that the applicant's spouse has adopted the U.S. culture and way of life, and he has developed close personal and professional ties in the United States. *Brief in Support of Appeal*, at 4, dated November 9, 2005. The applicant's spouse states that all four of his children are U.S. citizens, he has not resided in the Philippines for more than 20 years, he is not familiar with the way of life in the Philippines, he and the applicant would not be able to survive in the Philippines, and he has no social ties in the Philippines. *Applicant's Spouse's Statement*, at 3-4, dated October 27, 2004.

The applicant's spouse states that he is afraid to go to the Philippines because of the present political and social conditions, there is an extremist group called Abu Sayaff which has been targeting U.S. citizens and foreign nationals, and he fears for his safety. *Id.* at 5. In regard to country conditions, the Department of State has issued a travel warning for U.S. citizens which details security concerns throughout the country. *Department of State Travel Warning, the Philippines*, at 1, dated February 13, 2008.

Counsel states that if the applicant's spouse relocates to the Philippines he would have no medical insurance as bleak employment opportunities would prevent him from being able to afford medical care. *Brief in Support of Appeal*, at 8. The applicant's spouse states that with his present mental state, he would not be able to survive without health insurance. *Applicant's Spouse's Statement*, at 5. The record is not clear as to whether the applicant's spouse could get health insurance in the Philippines. The record reflects that the applicant's spouse evaluated by a psychologist who diagnosed him with Major Depressive Disorder, in remission. *Psychological Evaluation*, at 4, dated October 2, 2004. The psychologist states that the applicant's spouse reported that he tried to resettle in the Philippines in the 1990s with no success, and that resettlement will be a stressor that will increase the acuity of his symptoms. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the major depressive disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The applicant's spouse states that:

I would be forced to abandon my work here...I would lose all that I have worked for all these years...I have tried relocating to the Philippines in the early 1990s and I had to come back because it is very hard to survive in the Philippines...I understand that the current minimum wage in the Philippines is only...about five U.S. dollars a day...there is still an economic crunch resulting from the devaluation of the peso. There are mass lay-offs occurring right now because of the closing or scaling down of several businesses. The market and political situation is unstable. This is complicated more by the presence of an extremist group called the Abu Sayaff [sic] which has targeted US citizens and US interests.

Applicant's Spouse's Statement, at 3.

Considering the applicant's spouse's ties to the United States and the security issues presented, the AAO finds that the applicant's spouse would experience extreme hardship if he relocated to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant's spouse would lose the health insurance benefits that he receives through the applicant's employment. *Brief in Support of Appeal*, at 7. Counsel states that the applicant's spouse has already experienced the hardship associated with family separation, he lost his mother and youngest sibling in a ferry boat accident, he divorced his first wife and lost regular contact with his children, he suffered from physical signs of depression after his divorce and he is experiencing these symptoms with the applicant's immigration matter. *Id.* at 8. The applicant's spouse states that:

Ever since I learned that my wife could be asked to leave the country. I have been in a state of depression. I have experienced decreased energy, overtiredness, and feelings of helplessness and hopelessness...In the past, I have suffered tremendous losses in my life. I lost my mother and younger sibling in a ferry boat accident...After my first failed marriage, I thought I was going to go crazy. But all these[sic] changed when I met [the applicant].

Applicant's Spouse's Statement, at 1.

The applicant's spouse's psychologist states that:

The end of the marriage and loss of regular contact with his children had a devastating affect [sic] on [the applicant's spouse]. He described experiencing physical signs that indicated he developed a major depressive episode at the time. These include prominent feelings of depression, feeling overwhelmed by hopelessness, insomnia, anhedonia, and loss of appetite and weight...He appeared to begin to recover fully from the depressive episode when he developed his relationship with his current wife...[The applicant] is currently experiencing symptoms of moderate stress in response to his belief that his wife may not be able to remain in this country. These symptoms will increase and he will experience another Major Depressive episode if his wife were unable to remain with him in this country.

Psychological Evaluation, at 3-4.

As mentioned previously, the AAO gives minimal weight to the psychological evaluation. Based on the record, the AAO finds that insufficient evidence has been provided to establish that the applicant would experience extreme hardship if he remained in the United States without the applicant.

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.