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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

#2

[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date: JAN 09 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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in cursive script that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 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 procured admission into the United States by fraud or willful misrepresentation on December 19, 1990. The applicant is married to a U.S. citizen and has two lawful permanent resident sons. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the assertions provided in the affidavit of the applicant's spouse and the evidence in the record did not support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. The application was denied accordingly. *Decision of the District Director*, dated March 23, 2006.

On appeal, counsel asserts that the district director committed several errors of fact and law and abused her discretion in denying the applicant's waiver application. Counsel states that the applicant clearly established that his spouse would suffer extreme hardship as a result of his inadmissibility to the United States. Counsel states that if the applicant's spouse chooses to relocate to the Philippines to be with the applicant she will be risking her own health, safety and financial status. She states that if the applicant is removed from the United States the applicant's spouse will suffer unspeakable mental, emotional, physical and financial hardships. *Form I-290B*, dated April 12, 2006.

The record indicates that on December 19, 1990, the applicant presented a Filipino passport and B-2 visitor's visa with an assumed name, to gain entry into 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 applicant 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.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to the Philippines and in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

In his brief, counsel states that the applicant and his spouse met in 1992 and were married on February 24, 2001. *Counsel's Brief*, dated May 10, 2006. Counsel states that the applicant is currently a full-time student studying vocational nursing and his spouse is employed as a registered nurse. Counsel indicates that the applicant and his two sons are able to receive medical insurance through his spouse's policy and that the applicant receives treatment for his high blood pressure while his spouse receives treatment for diabetes. Counsel also states that the applicant two sons, aged nineteen and fourteen years old, received their immigrant status through a petition by the applicant's spouse and that they have been living in the United States since 2003. Counsel asserts that the applicant's spouse is the sole income earner for the family and that her income provides for a safe, healthy and stable home. In her brief, counsel concludes that the applicant's spouse will not be able to find a comparable paying job in the Philippines. In addition, counsel states that if the family relocates to the Philippines, the applicant's sons will be forced to give up their lawful permanent residence status. Lastly, counsel states that the applicant has no other legal basis for returning to the United States and that he will not even be able to visit his spouse and children with a tourist visa because of his misrepresentation. *Id.*

The record includes previously submitted affidavits from the applicant and his spouse. The applicant states that his spouse is the most important person in his life and that she provides him with emotional, financial, and psychological support. *Applicant's Statement*, dated January 22, 2003. He states that his spouse is a hard working person and he relies on her to provide emotional and financial support to their sons. He also states that he would be unable to cope without this support. The applicant states that he is worried about his family's life if he is forced to live in the Philippines. He states that he will not be able to earn enough income in the Philippines to help his family financially and does not want his two sons to grow up in the Philippines. He states that if he is removed from the United States, his sons will suffer mental hardship because they will grow up without their father. *Id.* The applicant's spouse states that she loves the applicant and that he is always there for her, making her feel confident when she is with him. *Spouse's Statement*, dated January 22, 2003. She states that her life would be incomplete without the applicant and that she would be unable to cope emotionally and psychologically. She also states that without the help of the applicant in caring for his sons, she would suffer emotional, mental and physical hardship. She states further that if the applicant is forced to remain in the Philippines for many years, she would be forced to leave her job as a registered nurse and move to the Philippines in an effort to keep their family together. She states that she would not be able to find suitable employment in the Philippines and that without employment her family would not be able to survive. She states that the other option for her is to remain in the United States without the emotional and financial support of her husband. She states that both of these options would result in severe emotional, mental, physical, and economic hardship for her and the applicant's sons. The applicant's spouse also states that she has been living in the United States for thirteen years and as established many considerable ties to the country and her community. She states that if she is separated from the applicant she would suffer hardship in not being able to help the applicant in his time of need and would worry about him all the time. The applicant's spouse also expresses concern over raising the applicant's sons on her own and the effects that would have on her as well as the applicant's sons because they would grow up without a father. *Id.*

The record also includes: an enrollment agreement from the applicant's college showing that he is enrolled in a program for vocational nursing, dated July 23, 2005; a copy of the applicant's medical insurance card; copies of the applicant's prescriptions for high blood pressure; a note from the applicant's spouse's doctor stating that the applicant's spouse has been taking Levothroid since 2001, dated May 4, 2006; copies of the applicant's sons' lawful permanent resident cards; a copy of the 2005 State Department Country Report on Human Rights Practices for the Philippines; an article from Yahoo News concerning Asian currency inflation and an article from the Philippine Daily Inquirer concerning education in the Philippines.

The AAO finds that the applicant has not established that his spouse would suffer extreme hardship as a result of his inadmissibility to the United States. Although the applicant did submit country information for the Philippines, this information is general and does not speak to the specific situation of the applicant and his spouse. The applicant's spouse is a registered nurse. The record does not indicate that a registered nurse would not be able to find employment in the Philippines or that the applicant would not be able to continue his training to become a vocational nurse in the Philippines, giving them the ability to provide for their family. Moreover, the AAO acknowledges the difficulties the applicant's spouse would face if she were to choose to reside in the United States without the applicant and raise the applicant's sons on her own. However, these difficulties do not rise to the level of extreme hardship. The applicant is employed as a nurse and the record does not demonstrate that she would suffer hardships above and beyond other families in the United States raising families with one parent. In addition, the record does not show that the applicant would not be able to continue his training and find employment to help support his family in the Philippines. Thus, the AAO finds that the current record does not support a finding that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant or as a result of relocation to the Philippines.

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 he 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.