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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

H₂

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date: JAN 26 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 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 under section 212(a)(6)(C)(i) of the Act, § 1182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The 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 District Director*, dated July 12, 2006.

On appeal, the applicant contends the district director failed to consider the totality of the evidence in making the extreme hardship determination. In addition, the applicant claims his wife's medical condition requires her to be in the United States, and that she would be unable to get proper treatment in the Philippines. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated July 18, 2006.¹

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating that they were married on December 11, 2003; copies of the applicant's and his divorce decrees from their previous marriages; the fraudulent passport and visa the applicant used to enter the United States; declarations from the applicant and his wife; letters of support from the applicant's brother and friend; letters from the applicant's and employers verifying their full-time employment; a letter from his nurse and medical records; financial and tax documents; and a copy of his application for life insurance. The entire record was reviewed and considered in rendering this decision.

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.

¹ On the applicant's Form I-290B, counsel stated that he would submit a brief and/or evidence to the AAO within 30 days from the date of the appeal. On January 16, 2009, the AAO forwarded a fax to counsel informing him that this office had not received a brief or evidence related to this matter. Counsel responded that he did not file a brief or evidence in support of this appeal. Therefore, the AAO will adjudicate the appeal based on the documentation in the record of proceeding.

Section 212(i) provides:

(1) 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. . . .

The record shows, and the applicant admits, that he entered the United States in February 2001 using a fraudulent passport. *Declaration of* [REDACTED], dated October 1, 2004. He concedes he used a different name to enter the United States because it “was the only way for [him] to get a US visitor’s visa.” *Id.* Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) for fraud or willfully misrepresenting a material fact in order to procure admission into the United States.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 under 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.

In this case, the applicant contends that his wife suffers from hypertension, has borderline high cholesterol, gout, and arthritis. *Declaration of* [REDACTED], *supra*. He claims “[s]he needs [his] constant supervision for her medications and doctor follow-ups every two weeks.” *Id.*; *Declaration of* [REDACTED], dated October 1, 2004; *Declaration of* [REDACTED], dated December 28, 2004 (stating that the applicant told him that [REDACTED] “needs special assistance with her medication and doctor’s visits”); *Declaration of* [REDACTED], dated November 30, 2004 (stating that [REDACTED] told him that “her arthritis is continually getting worse

and that she has to rely more and more on her husband . . . to do things for her.”); *Declaration of* [REDACTED], dated November 30, 2004 (same). A letter from a registered nurse states that [REDACTED] has hypertension, “Gouty Arthritis foot,” and borderline high cholesterol. *Letter from* [REDACTED], dated October 7, 2004. The letter further states that [REDACTED] will require follow up visits on a bi-monthly schedule. *Id.*

It is not evident from the record that the applicant’s spouse would suffer extreme hardship as a result of the applicant’s waiver being denied.

Although [REDACTED] has some health issues, there is insufficient evidence in the record to show that she would suffer extreme hardship if her husband’s waiver application were denied. The AAO notes that despite copies of lab results and a “cytology report” in the record, the only information in plain language from a health care professional in the record is the letter from [REDACTED]’s nurse which does not describe the exact nature and severity of [REDACTED]’s conditions, any treatment necessary, any medication [REDACTED] requires, or any family assistance needed. Furthermore, [REDACTED] herself does not elaborate or describe how her health conditions affect her daily life and how, specifically, she requires her husband’s assistance. Although the applicant claims he needs to “constantly” supervise her medications, there is no evidence in the record [REDACTED] takes any medications. In fact, [REDACTED]’s application for life insurance in the record, which was signed within two weeks of the applicant’s declaration, states that she is not taking any medications at all. *Zurich Life, Life Insurance Application*, signed by [REDACTED] on October 13, 2004. Moreover, [REDACTED] indicated in the application that she had never been treated for, or diagnosed with high blood pressure or elevated cholesterol. *Id.* She further stated that her “latest check-up was September 2004 because of gouty problem. Took Motrin [for] 15 days. All normal. . . . Now not taking any medication. Everything normal.” *Id.* Without consistent and more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed, particularly when there is conflicting evidence in the record.

[REDACTED] does not address whether returning to the Philippines, where she was born and lived until 2002, in order to avoid the hardship of separation from her husband would cause extreme hardship. The AAO recognizes that [REDACTED] will endure hardship as a result of separation from the applicant. However, their situation, if [REDACTED] 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. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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(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.