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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H₂

FILE:

Office:

LOS ANGELES

Date:

JUN 26 2009

IN RE: Applicant:

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:

SELF-REPRESENTED

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 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 procured entry to the United States in April 1997 by presenting a passport and visa belonging to another individual. The applicant was thus 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 entry into the United States by fraud and/or willful misrepresentation.¹ The applicant 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 U.S. citizen spouse.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 18, 2005.

In support of the appeal, counsel for the applicant submits a brief, dated December 12, 2005 and referenced exhibits.² 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.

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 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 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...

¹ The applicant does not contest the district director's finding. Rather, she is filing for a waiver of inadmissibility.

² The AAO notes that the applicant was represented on appeal by [REDACTED]. On September 26, 2007 [REDACTED] was expelled from the practice of law before the U.S. Citizenship and Immigration Services. Therefore, while all submissions have been considered in the review of the appeal, the applicant can no longer be represented by [REDACTED] in this matter.

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse. 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. 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.

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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The applicant's U.S. citizen spouse contends that he will suffer emotional and financial hardship if the applicant is removed from the United States. In a declaration he states that he will suffer extreme emotional hardship due to the close and dependent relationship he has with his wife. In addition, he notes that if the applicant is removed, it will be financially difficult for him to visit his wife and he will be placed at risk due to security concerns in the Philippines. *Affidavit of* [REDACTED] dated September 6, 2005.

To corroborate the emotional hardship referenced above with respect to the applicant's spouse, a psychological evaluation has been submitted. In said evaluation, [REDACTED] concludes that the applicant's spouse is suffering from Major Depression, Recurrent, In Remission and Dysthymic Disorder. [REDACTED] further states that a separation from the applicant may put the applicant's spouse at risk of a debilitating depression with suicidal features. *Psychological Evaluation Prepared by* [REDACTED], *Clinical and Forensic Psychology*, dated August 30, 2005.

With respect to the emotional hardship referenced, the AAO notes that although the input of any health professional is respected and valuable, the submitted evaluation is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse and/or a specific treatment plan for the mental health conditions referenced by [REDACTED] to further support the gravity of the situation. 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 mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.³ Finally, the applicant's spouse's situation does not appear to be extreme as he is clearly able to maintain long-term, consistent employment, as he has been employed with his current employer since 1964. *See SBC Employment Verification for [REDACTED]* dated May 2, 2005.

The evidence in the record shows that the applicant has a very loving and devoted spouse 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 or 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 a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

As for the financial hardship referenced above, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after

³ On appeal, counsel for the applicant has provided a copy of a prescription for Celexa issued to the applicant's spouse. The AAO notes that [REDACTED] conducted her evaluation in August 2005, but the above-referenced prescription was not provided to the applicant's spouse until December 2005, four months after the initial diagnosis. Nor is the prescription accompanied by a letter from the treating physician outlining the applicant's spouse's current mental health situation and the relevance of the prescription, to support the gravity of the applicant's spouse's mental health situation. As such, it can not be concluded that the applicant's spouse's mental health situation is extreme.

having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No documentation has been provided that outlines the applicant's spouse's current financial situation, including income, expenses, assets and liabilities, and his needs, to establish that without the applicant's continued presence in the United States, his hardship would be extreme. Moreover, counsel provides no objective documentation that confirms that the applicant's spouse would not be able to travel to the Philippines to visit the applicant due to the high costs of travel and/or assist the applicant financially while she resides abroad, in light of the fact that in 2004, the applicant's spouse made over \$85,000, well above the poverty guidelines for 2009. *See Form W-2, Wage and Tax Statement for 2004*. Finally, although the applicant's spouse contends that he fears traveling to the Philippines due to the problematic country conditions, the AAO notes that the information provided by counsel with respect to country conditions in the Philippines is general in nature and does not establish that the applicant's spouse specifically would be in danger were he to travel abroad to visit the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). As such, the record fails to establish that the applicant's spouse's continued care and emotional and financial survival directly correlate to the applicant's physical presence in the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen spouse contends that he will suffer extreme hardship were he to accompany the applicant to the Philippines, as he would experience family separation, loss of employment, financial uncertainty and unfamiliarity with the language, culture and customs of the country. The AAO has determined that extreme hardship would exist were the applicant's spouse to accompany the applicant to the Philippines. The applicant's spouse, 60 years old at the time the appeal was filed, was born and raised in the United States and has a number of relatives, including three children, a parent and two siblings, residing in the United States. He has no family, social or employment ties to the Philippines, and is in fact strongly immersed in his community and in his employment, as he has worked for the same company as a service technician since 1964. In addition, the applicant's spouse does not speak the Filipino dialect. *Supra* at 3. Given these factors, the applicant's spouse would experience extreme hardship if he were to accompany the applicant to the Philippines.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that her U.S. citizen spouse would experience extreme hardship were he to relocate abroad due to the applicant's inadmissibility, the applicant has failed to

establish that her spouse would suffer extreme hardship if he were to remain in the United States while the applicant relocated abroad. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is no documentation establishing that his emotional, psychological and/or financial hardship would be any different from other families separated as a result of immigration problems. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional hardship he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.