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U.S. Citizenship
and Immigration
Services

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MAR 03 2009

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

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:



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).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 misrepresenting material facts in order to gain an immigration benefit. The applicant has a naturalized U.S. citizen husband, three U.S. citizen children and is the beneficiary of an approved immigrant petition for alien relative. She 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 family.

The 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 Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated September 1, 2006.

On appeal, counsel contends that the applicant has established that her spouse, [REDACTED] would suffer extreme hardship in the event her application for a waiver of inadmissibility is denied. *Counsel's brief*, dated September 28, 2006.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens unlawfully present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departures or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The director found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) for having been unlawfully presence in the United States for more than one year from April 1, 1997 to January 10, 2003. However, the AAO does not find the record to support this conclusion.

The AAO notes that the applicant entered the United States on a B-2 visitor's visa on September 9, 1988, valid until March 9, 1989. The applicant remained in the United States. On May 26, 1994, the applicant filed a Form I-485 seeking adjustment of status but withdrew her application on June 28, 1995. On June 23, 1997, the applicant filed a second Form I-485 and, thereafter, departed the United States on an advance parole, triggering the unlawful presence provisions of the Act.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by [REDACTED] Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until June 23, 1997, when she filed her second Form I-485, less than 180 days. Accordingly, the applicant is not inadmissible to the United States under section 212(a)(9)(B) of the Act.

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.

The record reflects that at her first interview for the adjustment of status on October 24, 1994, the applicant testified that she had first married her husband on November 7, 1993. However, the record

indicates that an overseas investigation subsequent to the applicant's interview revealed that she had married her husband on June 1, 1984 and was still married to him on the date of his marriage to a U.S. citizen, a marriage from which he subsequently obtained lawful permanent residence. In failing to disclose the true date of her marriage, the AAO finds that the applicant willfully misrepresented a material fact, closing off a line of inquiry that might have resulted in a determination that her husband's lawful permanent resident status had been obtained through a bigamous marriage and that she was, therefore, ineligible for adjustment of status based on the immigrant visa petition he had filed on her behalf. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a waiver under section 212(i).

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a qualifying relative(s), the applicant's spouse and/or parents. Hardship an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(i) waiver proceedings except to the extent that it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Therefore, the relevant hardship in the present case is hardship suffered by the applicant's husband.

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 provides a list of factors relevant in 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). 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 whether he resides in the Philippines or the United States, as he is not required to reside outside 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.

Counsel contends that the applicant's spouse would suffer extreme financial, emotional and psychological hardship if he remained in the United States and the applicant's waiver application were denied. Counsel submits a statement from the applicant's spouse, dated August 3, 2006. In this statement, the applicant's spouse states that although he is employed as a letter carrier with the U.S. Postal Service, the family's financial, medical and educational needs are substantially provided for by the applicant and that their combined income pays the mortgage on their house. He asserts that, without the applicant's earnings, he will be placed in extraordinary hardship because he will have to carry the burden of supporting his children, not to mention the emotional and psychological trauma that her departure would create for him.

Economic hardship faced by the applicant's spouse is relevant in determining whether extreme hardship exists. In support of the applicant's spouse's financial hardship, the record contains a range of financial documents, including tax returns, bank statements and documents related to property owned by the applicant and her spouse, including a Grant Deed showing that they purchased property in Los Angeles, California as husband and wife on November 19, 1996. However, the record does not contain any documentary evidence showing the value or price of the house, the mortgage loan on the house or the monthly mortgage payments. Neither does the record include documentation to establish the family's living, medical and educational expenses. The assertions of counsel and the applicant's spouse do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply 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)). Furthermore, the record contains no documentation that establishes that the applicant would be unable to find a job in the Philippines and earn sufficient income to assist her spouse in supporting their family from outside the United States. The record, therefore, does not support a finding that the applicant's spouse would experience significant economic hardship following her removal from the United States.

The record includes a report, dated September 21, 2006, from [REDACTED] a licensed psychologist at the Centro De Desarrollo Personal in El Monte, California. The report is based on a psychological evaluation of the applicant's spouse performed on September 20, 2006 and September 21, 2006, and concludes that the current severity of the applicant's spouse's emotional state, as corroborated by the result of the Beck Depression Inventory II, Beck Anxiety Inventory, the Achenbach Adult Self-Report and the Achenbach Adult Behavior Checklist, would be exacerbated by separation from his wife and child. [REDACTED] finds the applicant's spouse's stress and anxiety have resulted in the development of an Adjustment Disorder of Adult Life with Mixed Anxiety and Depressed Mood (DSM-IV Diagnosis: 309.28), resulting in disturbances in sleep and appetite, impairments in attention and concentration, increasing withdrawal and isolation, and generalized feelings of hopelessness, loneliness and sadness. The psychologist further concludes that such symptoms can have adverse life-long consequences.

The AAO observes that the evaluation prepared by [REDACTED] is based on only two interviews with the applicant's spouse and would normally be of diminished value to a determination of extreme hardship. However, as noted above, [REDACTED] has also relied on a series of standardized psychological tests to reach her conclusions concerning the impact of the applicant's removal on her spouse. In that [REDACTED] observations are based on the results of these tests, as well as her interviews with the applicant's spouse, the AAO will accept her findings as relevant to this proceeding.

The AAO is mindful of and sensitive to the applicant's and her spouse's concerns about maintaining their family and the hardship the applicant's spouse would endure upon separation. Having considered the hardship factors in this matter, the AAO finds the evidence of record sufficient to demonstrate that the applicant's spouse would suffer extreme hardship in the event he remained in the United States following the applicant's removal.

However, as previously discussed, extreme hardship to the applicant's spouse must be established whether he resides in the United States or the Philippines. Therefore, the AAO now turns to a consideration of whether the record also establishes that the applicant's spouse would suffer extreme hardship if he relocated to the Philippines.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines as all of his close family members reside in the United States and he has no ties in the Philippines. Counsel also contends that the applicant's spouse would suffer extreme hardship in the Philippines because of the unemployment problem and bad economic conditions. The applicant's spouse asserts in his statement, dated August 3, 2006, that if he and his three children were to join his wife in the Philippines, it will be very hard for him and his wife to find jobs as the unemployment rate is a perennial problem. He also states that he has lived in the United States for the past 22 years, and all his immediate family members live in the United States.

In support of this assertion, counsel submits a copy of Background Note: Philippines, Department of States, September 2005. The AAO notes, however, that the generalized information on the Philippine economy provided in the Background Note does not address the specifics of the applicant's spouse's circumstances. Accordingly, it does not establish that the applicant and her spouse would be unable to find employment in the Philippines. Furthermore, a claim of difficulty in finding employment and inability to find employment in one's trade or profession, although a relevant factor, is not sufficient to justify a grant of relief in the absence of other substantial equities. *Matter of Pilch, supra* at 631. When considered in the aggregate and in light of the Cervantes-Gonzalez factors previously cited, the AAO finds that the evidence of record is insufficient to establish that the applicant's spouse would suffer extreme hardship if he relocated to the Philippines with the applicant.

In the final analysis, the AAO finds that, when considered in the aggregate, the applicant has failed to establish that her spouse would experience hardships over and above the normal economic and social disruptions created by removal so as to warrant a finding of extreme hardship. As the

applicant is statutorily ineligible for relief under 212(i) of the Act, 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(a)(6)(C)(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.