

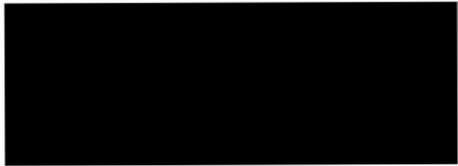


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FILE:



Office: MANILA, PHILIPPINES

Date NOV 04 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:

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Thailand and a 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen, and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office 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 Field Office Director*, at 6, dated December 7, 2007.

On appeal, the applicant's spouse states that proper concentration of all hardship factors was not given by the field office director. *Form I-290B*, at 2, received January 7, 2007.

The record includes, but is not limited to, the Form I-290B, the applicant's statement and the applicant's spouse's statements. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on December 9, 2002, the applicant sought admission to the United States as a B-2 nonimmigrant and stated that she was coming to the United States to visit family on her visitor's visa and that she had not previously worked in the United States. However, the applicant subsequently admitted that she was working as a clerk for New Jersey Mobile Dentistry, PA. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for this misrepresentation.

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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in the Philippines or in the United States, as the qualifying relative 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 a qualifying relative in the event that the qualifying relative resides in the Philippines. The applicant's spouse states that the applicant cannot find a job in the Philippines as she is 48 years old, and he would not be able to find a job there because he is 58 years old and priority jobs will be given to Filipinos. *Applicant's Spouse's Second Statement*, at 2, dated February 5, 2008. The applicant states that relocation for her spouse would be difficult as employment for expatriates is difficult unless one is a CEO of a multinational corporation, he is 58 years of age, the Philippines puts a premium on employing young people, she has reached the age where it is hard for her to get a job, her spouse may find it difficult to adjust to the Filipino way of life and he may be harmed by Filipinos who are sympathetic to victims of American soldiers. *Applicant's Statement*, at 2, dated February 5, 2008. The record does not include documentary evidence that establishes that the applicant and her spouse would be unable to find employment in the Philippines or of any other types of hardship that the applicant's spouse would encounter. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). The AAO finds that the record does not include sufficient evidence of emotional, financial,

medical or any other hardships that, in the aggregate, establish that the applicant's spouse would experience extreme hardship upon relocating to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that he met the applicant in July 2002, they started dating and they got married on May 18, 2005; he has been to the Philippines four times to keep their marriage strong; being apart is very difficult for them; and they love each other very much. *Applicant's Spouse's Second Statement*, at 1-2. The applicant states that the progress of technical communication cannot and never will be able to replace physical presence, care and love when together; the distance has put a tremendous strain on her and her spouse mentally, physically and emotionally; she fears the day that her spouse will begin to drink himself to death because she is not there to take care of him and give him her love; and they have suffered financially and have exhausted all of their savings, preventing her spouse from taking trips to the Philippines. *Applicant's Statement*, at 1-2. The applicant's spouse states that he has incurred long distance telephone charges of over \$1,800 per year; the applicant has not been able to find steady employment; he is responsible for her rent of \$1,400 per year, food at \$1,500 per year, transportation and other expenses of \$2,000 per year, and gas and electric at \$1,500 per year; and her ex-spouse has been sick and unable to provide child support to the applicant's son, he has taken over as his stepfather and provided for his daily expenses, including his college tuition of \$1,800 a year for two years. *Applicant's Spouse's First Statement*, at 1, dated May 17, 2007. The record does not include documentary evidence of the financial hardship claimed by the applicant's spouse or of any other types of hardship that the applicant's spouse would encounter. The AAO also notes that the record fails to document that the applicant has a son. The record does not include sufficient evidence of emotional, financial, medical or any other hardships that, in the aggregate, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States.

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.