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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

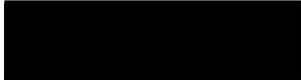


**U.S. Citizenship
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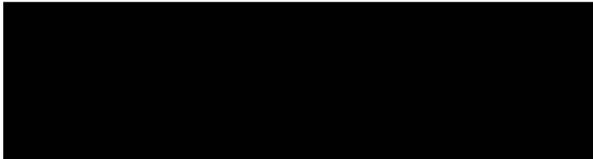
Date: NOV 04 2009

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:



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 Acting Field Office Director, Sacramento, 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States 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 in the United States with her spouse.

The Acting Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated May 10, 2007.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal or Motion*.

In support of the waiver, counsel submits a statement. The record also includes, but is not limited to, a statement from the applicant's spouse; a medical letter for the applicant's spouse; a medical certificate for the mother of the applicant's spouse; tax statements and Form W-2s for the applicant's spouse; an employment letter for the applicant's spouse; a bank statement; a life insurance policy; a property transfer report; a utility bill; and a grant deed. 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 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 on February 3, 2006 the applicant was admitted to the United States on a B-2 visitor's visa, valid until August 2, 2006. *Form I-94, Departure Card*. On February 23, 2006 the applicant married her U.S. citizen spouse. *Marriage certificate*. At her adjustment of status interview, the applicant admitted that she was planning to stay in the United States at the time of her February 3, 2006 admission. *Form I-485 interview notes*. The AAO also notes that the applicant married her spouse 20 days after her admission to the United States. As the applicant was an intending immigrant at the time she entered the United States on a nonimmigrant visa, she is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a 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.

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 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.

If the applicant's spouse relocates to the Philippines, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the Philippines. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse states that he does not have any relatives in the Philippines. *Statement from the applicant's spouse*, dated April 3, 2006. He notes that he is the only child who cares for his elderly mother who lives with his family. *Id.* He takes his mother to her doctors' appointments, helps with her household chores, and does other miscellaneous activities that she is unable to do as a result of her medical condition. *Id.* The

applicant's spouse also states that he assists his mother in paying her bills. *Id.* The AAO notes that the record includes a medical certificate of professional care signed by a physician stating that the applicant's mother is under medical care for diabetes and high blood pressure. *Certificate of [REDACTED]*, dated April 16, 2007. While the AAO acknowledges the medical conditions of the applicant's spouse's mother, as documented by a licensed healthcare professional, it notes that the physician's certificate makes no mention of the limitations imposed on the applicant's spouse's mother by her health problems. While the AAO does not diminish the seriousness of diabetes and high blood pressure affecting the applicant's spouse's mother, it notes that the record fails to document how these conditions impair her daily life to the point that she needs assistance. It also finds no evidence in the record that demonstrates that the applicant's spouse provides his mother with financial assistance.

The applicant's spouse notes that he will be unable to receive proper medical care in the Philippines for his own health conditions. *Statement from the applicant's spouse*, dated April 3, 2006. The record contains a statement from the applicant's spouse's physician noting that he has HTN, pre-diabetes and hyperlipidemia and that he currently receives medication for these conditions. *Statement from [REDACTED]*, dated March 12, 2007. While the AAO acknowledges the medical conditions of the applicant's spouse, as documented by a licensed healthcare professional, it notes that the record does not contain any documentation, such as published country conditions reports, that demonstrates adequate medical care for his conditions would be unavailable in the Philippines. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Counsel also asserts that the applicant's spouse would be unable to secure a job given the high unemployment prevalent in the Philippines. Again, the AAO notes that the record fails to include documentary evidence to support this claim. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the Philippines. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The mother of the applicant's spouse resides with him in the United States. *Statement from the applicant's spouse*, dated April 3, 2006. The applicant's spouse states that his financial condition is limited due to the fact that he makes \$9.00 an hour. *Id.* He asserts that his family's financial condition will be further threatened in the event the waiver application is denied. *Id.* The record includes tax statements and Form W-2s for the applicant's spouse, as well as an employment letter stating he earns \$9.40 an hour. *Tax statements; Form W-2s; and employment letter for the applicant's spouse*, dated April 5, 2006. The record also includes a utility bill documenting the applicant's expenses. *Utility bill*. While the AAO acknowledges the earnings of the applicant's spouse, it does not find the record to establish that he would experience financial hardship in the applicant's absence as it fails to

document all of the applicant's spouse's monthly expenses, including what financial assistance he provides to his mother. Further, it notes that there is nothing in the record to show that the applicant would be unable to obtain employment and contribute to her family's financial well-being from a place other than the United States. The record does not include published country conditions reports regarding the economic situation and the availability of employment in the Philippines. The applicant's spouse notes that his mother is frail and in need of a lot of medical attention. *Statement from the applicant's spouse*, dated April 3, 2006. He further asserts that he is the only one who cares for his mother and that his health condition is also precarious. *Id.* He states that if the applicant's waiver application is denied, he will be forced to deal with both his health problems and those of his mother. *Id.* The applicant's spouse also contends that the loss of the applicant's companionship will be too great for him to bear, as the applicant has helped to fill the void left by the death of his first wife. *Id.* The AAO notes that the record fails to include documentation, such as a statement from a licensed healthcare professional, regarding the mental health of the applicant's spouse as it relates to being separated from the applicant. While the record includes a certificate of professional care noting that the mother of the applicant's spouse is under medical care for diabetes and high blood pressure, the record fails to include documentation to establish that she requires the applicant's spouse's assistance. [REDACTED], dated April 16, 2007. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of 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 applicant's spouse states that being separated from the applicant will deal a severe blow to his well-being. *Statement from the applicant's spouse*, dated April 3, 2006. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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(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.