

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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  
and Immigration  
Services

PUBLIC COPY

H2

FILE:

Office: CHICAGO (MILWAUKEE WI)

Date: OCT 01 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), and Section 212(i) of the 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 District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a false passport and entry document. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and 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 found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated December 27, 2006.

On appeal, counsel contends that the applicant's "conviction is only for a Class A misdemeanor rather than Class A felony, and insufficient weight has been given to the degree of hardship experienced by the U.S. citizen spouse and U.S. citizen stepson." *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on February 20, 2004; letters from [REDACTED] and her son from a previous relationship; a letter from the applicant's U.S. citizen mother; letters from the applicant's and [REDACTED]'s employers; copies of tax and other financial documents; conviction documents; and a copy of an approved Petition for Alien Relative (Form I-130).

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

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.

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.

In this case, the district director found, and counsel does not contest, that the applicant entered the United States using a false passport and entry document on or about January 1993. Therefore, the AAO finds that applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i), for fraud. In addition, the record shows that on June 7, 2002, the applicant was convicted of battery and sentenced to fifteen months imprisonment. Significantly, counsel does not contend that the applicant's conviction is not a crime involving moral turpitude, but rather, argues only that the conviction was for a misdemeanor and not a felony. Although the Judgment of Conviction in the record indicates counsel is correct in that the applicant was convicted of a misdemeanor, and even assuming the crime was not a crime involving moral turpitude, nonetheless, the applicant remains inadmissible for fraud.

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.

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

In this case, the applicant's wife, [REDACTED], states that she has an eleven year old son from a previous relationship. She contends that she and the applicant work a "split shift" to ensure that one of them is there for her son. [REDACTED] states the applicant takes her son to school in the morning and picks him up from school whenever he is ill. She claims it would be emotionally devastating to her son if the applicant departed the United States because her son considers the applicant as "a main father figure in his life." [REDACTED] explains that the applicant's battery conviction occurred when her son's biological father was harassing her and then tripped the applicant. She contends the applicant acted in order to defend her. *Letter from* [REDACTED], dated January 21, 2007.

A letter from the applicant's mother, [REDACTED] states that the applicant "is not really a bad boy" and that he never had a fight with anybody until the one time he was convicted. She contends the applicant has been living with her and that all he wants to do is work hard, pay his taxes, and live a better life in the United States. In addition, [REDACTED] states that she and her husband are getting old and are not in good health. She contends her husband has a heart problem and "bad emphysema," and that the applicant is the only person they can depend on to help them. *Letter from* [REDACTED], dated January 21, 2007.

Upon a complete review of the record evidence, the AAO finds that there is insufficient evidence to show that the applicant's wife or parent will experience extreme hardship if the applicant's waiver application were denied.

The AAO recognizes that the applicant's wife and parents will endure hardship as a result of the denial of the applicant's waiver application and is sympathetic to the family's circumstances. However,

neither [REDACTED] nor [REDACTED] discuss the possibility of moving back to the Philippines, where both were born, to avoid the hardship of separation, and they do not address whether such a move would represent a hardship to them. [REDACTED] a registered nurse, has not alleged she cannot find employment in the Philippines or that she or her son have any physical or mental health issues that would make her readjustment to living in the Philippines more difficult than would normally be expected. Indeed, the record shows that both of Ms. [REDACTED] parents live in the Philippines. *Biographic Information (Form G-325A)*. To the extent [REDACTED] claims her husband has a heart problem and emphysema, there is no letter in the record from the applicant's father. In addition, there is no evidence from any health care professional addressing the diagnosis, prognosis, or severity of the applicant's father's health conditions. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record indicates that if the applicant's wife and parents decide to live in the United States without the applicant, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. Although the AAO recognizes the challenges of single parenthood, there is no allegation that [REDACTED]'s situation is unique or atypical compared to other individuals separated as a result of deportation or exclusion. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). 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. *See also Perez v. INS, supra* (holding that the common results of deportation are insufficient to prove extreme hardship); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 or parent 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.