



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: MANILA, PHILIPPINES

Date: OCT 01 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Manila, Philippines. The matter 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible 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 admission into the United States by fraud or willful misrepresentation on December 28, 1988. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

The AAO notes that the applicant has also filed an Application for Permission to Reapply for Admission (Form I-212) for the ground of inadmissibility under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

In a decision, dated March 28, 2007, the OIC denied both the applicant's waiver application and his application for permission to reapply for admission. He found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse and that as his waiver application had been denied no purpose would be served in discussing his application for permission to reapply for admission. The applications were denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), counsel states that the OIC abused his discretion in failing to consider the total hardships in their cumulative effect to the applicant's spouse, erred in drawing conclusions of law and fact, and erred in his denial of the applicant's Form I-212.

The AAO notes that in situations where an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose."

The record indicates that the applicant entered the United States on December 28, 1988 by presenting a B-2 visitor's visa and passport containing a name and birth date that was not his own. On May 10, 1993 the applicant filed an asylum application, but withdrew this application in 2000. He was then granted voluntary departure until December 2000, with which he did not comply. The applicant was later deported in 2003. Thus, the applicant was unlawfully present in the United States

for more than one year and is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act.

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-

....

(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 applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States by fraud or misrepresentation when he presented a visitor's visa and passport bearing a name and birth date that were not his own.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant or his children experience due to separation is not considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse.

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 set forth a list of non-exclusive factors relevant to 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 in the event that she resides in the Philippines and in the event that she resides in the United States, as she 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.

The record of hardship includes: a psychological evaluation for the applicant's spouse and children, a statement by the applicant's spouse, medical documentation, and financial documentation.

The psychological evaluation, by [REDACTED] was completed in October 2004. In his evaluation, [REDACTED] concludes that the applicant's spouse is suffering from Major Depressive Disorder as a result of being separated from the applicant and that the applicant's son and daughter are exhibiting some developmental delays. The report does not recommend any further treatment for the applicant's spouse and the record does not indicate that in the three years between when this evaluation was done and the applicant's appeal was filed any further treatment was sought by the applicant's spouse for her symptoms. The AAO notes that although the input of any mental health professional is respected and valuable, the submitted report is based on one interview between the applicant's spouse, her children, and [REDACTED], and it does not recommend follow-up or further treatment for the Major Depressive Disorder. Accordingly, the conclusions reached in the report are of diminished value to a determination of extreme hardship.

In a statement, dated February 27, 2007, the applicant's spouse states that she is suffering emotionally and financially and the applicant is suffering in the Philippines from being separated from his family. The applicant's spouse states that she sends money to the Philippines to care for her mother and that she has two brothers living in the Philippines. The medical records submitted indicate that the applicant's spouse dislocated her shoulder in December 2004. In addition, the record indicates that the applicant's spouse is a registered nurse. The AAO notes that there is no record of possible hardship to the applicant's spouse if she relocates to the Philippines to be with the applicant. The record contains no information regarding country conditions in the Philippines or the applicant's spouse's ability to find employment as a nurse. Moreover, the record does not indicate that the hardships faced by the applicant's spouse as a result of separation rise to the level of extreme hardship. Thus, based on the current record the AAO cannot find that the applicant's spouse would suffer extreme hardship as a result of being separated from the applicant.

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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.