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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 and Immigration Services

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FILE: [REDACTED]

Office: SANTA ANA, CALIFORNIA

Date: SEP 17 2009

IN RE: Applicant: [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 or reopen, 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 Field Office Director, Santa Ana, California, and 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for marrying a lawful permanent resident of the United States while present on a B-2 nonimmigrant visa and for entering the United States on a B-2 nonimmigrant visa with intentions to permanently reside in the United States with his wife. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 his United States citizen wife and child.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 10, 2007.

On appeal, the applicant, through counsel, asserts that the applicant's wife will suffer extreme hardship if the applicant's waiver application is denied. *Form I-290B*, filed May 11, 2007.

The record includes, but is not limited to, letters from the applicant and his wife, a psychological evaluation on the applicant's wife's psychological status, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provide that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on June 3, 2006, the applicant entered the United States on a B-2 nonimmigrant visa. On June 10, 2006, the applicant married his wife, a lawful permanent resident of the United States. On or about June 18, 2006, the applicant departed the United States. On October 2, 2006, the applicant reentered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until April 1, 2007; however, the applicant failed to depart the United States when his authorization expired. On October 25, 2006, the applicant's wife became a United States citizen. On December 28, 2006, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 9, 2007, the applicant's Form I-130 was approved. On March 16, 2007, the applicant filed a Form I-601. On April 10, 2007, the Field Office Director denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relative.

The AAO finds that the applicant willfully misrepresented a material fact on his nonimmigrant visa application when he sought admission to the United States on a B-2 nonimmigrant visa to marry his wife and to permanently reside in the United States. The AAO notes that when a misrepresentation is committed it must be material. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). According to the Department of State's Foreign Affairs Manual and the Board of Immigration Appeals (Board), a misrepresentation is material if either: (1) The alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *9 FAM 40.63 N61*; *see also Matter of S- and B-C-*, *supra*. Had the applicant mentioned his intentions, his application for a non-immigrant visa would have been denied on the basis that the applicant was an intending immigrant. Additionally, the AAO notes that counsel does not dispute that the applicant misrepresented himself in order to gain entry into the United States. Therefore, the omission of the applicant's intentions in the United States when entering the United States on a nonimmigrant visa is a material misrepresentation and he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(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. Hardship the alien himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's spouse. 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, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel claims that the applicant's wife will suffer extreme psychological hardship if the applicant is removed to the Philippines. In an evaluation dated May 6, 2007, [REDACTED] diagnosed the applicant's wife with major depressive disorder with postpartum onset. [REDACTED] states that if the applicant is required to leave the United States, his wife's "condition will worsen considerably." The AAO notes that although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on one interview between the applicant's wife and a psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's wife. Moreover, the conclusions reached in the submitted assessment, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the assessment's value to a determination of extreme hardship.

In a letter dated March 12, 2007, the applicant's wife states she "cannot picture [her] daughter growing up without [the applicant], [she] imagine[s] it would have a negative impact on her life and that is too painful to contemplate." The AAO notes that the applicant's daughter may experience some hardship in relocating to the Philippines; however, as noted above, the applicant's daughter is not a qualifying relative for a waiver under section 212(i) of the Act. The AAO notes that the applicant's wife is employed as a registered nurse and it has not been established that she has no transferable skills that would aid her in obtaining a job in the Philippines. Additionally, the AAO notes that the applicant's wife is a native of the Philippines who spent her formative years in the Philippines, she speaks the native language, and it has not been established that she has no family ties in the Philippines. In fact, the record establishes that the applicant's wife's parents and three siblings reside in the Philippines. The AAO notes that the applicant's wife states she does not "have any immediate or close relatives that live around [her] that can help [her]." The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment. In her evaluation, [REDACTED] states the applicant and his wife have "agreed that [the applicant's wife] should stay in the United States to raise her child, regardless of the outcome of [the applicant's] case." The AAO notes that as a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, the AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.