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



U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA Date: SEP 29 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:

[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 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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 seeking admission into the United States by fraud or willful misrepresentation.

The applicant is the spouse of [REDACTED] a naturalized citizen of the United States; and the daughter of parents who are naturalized citizens of the United States. She sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The district director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, dated December 14, 2006.* The applicant submitted a timely appeal.

On appeal, counsel states that if the waiver application were approved [REDACTED] would continue to take care of her aging parents and sick husband, with whom she has a close relationship. Counsel states that if [REDACTED] joined his wife in the Philippines he would leave his five children from a prior marriage in the United States. According to counsel, [REDACTED] has diabetes, which forced him to retire early. She states that he receives social security benefits of \$714 each month and is a part-time real estate agent. Counsel states that [REDACTED] asserts that [REDACTED] monthly income of \$1,000 as a babysitter allows them to live decently. Counsel states that [REDACTED] s age and health problems would make obtaining employment in the Philippines difficult, if not impossible. Counsel states that [REDACTED] medications include Glucovance, Atenol, Plendil, and Zocor. [REDACTED] counsel states, conveys that he has had diabetes and high blood pressure for nearly six years and now his eyesight is failing. She states that [REDACTED] asserts that it would be devastating if [REDACTED] were deported because she takes care of him by giving him medication and cooking healthy meals. According to counsel, [REDACTED] parents subsidize [REDACTED] two children, and in return, [REDACTED] drives her parents to work and elsewhere. Counsel states that [REDACTED] indicates that her parents would be unproductive if she were in the Philippines.

The AAO will first address the finding of inadmissibility.

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.

On appeal, counsel states that the applicant entered the United States on February 5, 1992, using a B-1 visa under an assumed name. This is confirmed by a sworn statement taken at the applicant's adjustment interview. Based on this, the applicant is inadmissible under section 212(a)(6)(C) of the

Act for having willfully misrepresented the material fact of her true identity so as to procure admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to the applicant and to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's husband and parents, who are all naturalized citizens. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

The record contains photographs, birth certificates, a marriage certificate, naturalization certificates, employment letters, medical records, a letter from a church, a letter from [REDACTED], a letter from [REDACTED], income tax records, a social security benefit statement for 2005, and other documentation.

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to the applicant's qualifying relative must be established in the event that he or she remains in the United States without the applicant, and alternatively, if he or she joins the applicant to live in the Philippines. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

[REDACTED] conveys in his affidavit dated June 29, 2006, that his life will be shattered if he is separated from his wife. He states that he has diabetes, high blood pressure, and failing eyesight and needs his wife to take care of him. Medical records show [REDACTED] has diabetes; however, the AAO cannot determine from those records whether or not [REDACTED] has high blood pressure or problem eyesight. [REDACTED] medication includes Glucovance, Atenol, Plendil, and Zocor. [REDACTED] indicates that he is a part-time real estate agent. There is a letter confirming his part-time employment with Century21 Pure Gold. [REDACTED] states that he receives \$714 each month in social security benefits, and the letter by the Social Security Administration corroborates this. He states that his wife contributes to their household income, earning \$1,000 each month as a babysitter. An employment letter by [REDACTED] dated June 29, 2006, reflects [REDACTED] employment.

Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)).

[REDACTED] indicates that he needs his wife in the United States to financially assist him. Income tax records for 2005 show that [REDACTED] had income of \$20,186, but no documentation is in the record of [REDACTED] household expenses. In the absence of such documentation, the AAO cannot determine whether [REDACTED] income is sufficient to meet his monthly financial obligations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Although [REDACTED] asserts that he requires his wife to take care of him due to his health problems, [REDACTED] is able to function as a real estate agent. Nothing in the record suggests that he would be unable to prepare meals or take medication without assistance from his wife.

[REDACTED] is concerned about separation from his wife. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the evidence in the record. After careful consideration, it finds that [REDACTED] situation, if he remains in the United States without his wife, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO conveys that the emotional hardship to be endured by [REDACTED] is a heavy burden, but it is not unusual or beyond that which is normally to be expected upon removal. *See Hassan and Perez, supra.*

With regard to [REDACTED] parents, [REDACTED] asserts in her affidavit dated June 29, 2006, that her parents would no longer be productive if they were not working to subsidize [REDACTED] children. [REDACTED] assertion, however, is not sufficient to explain why her parents would experience extreme hardship if they were to remain in the United States without [REDACTED].

In considering all of the hardship factors presented, both individually and in the aggregate, the AAO finds they fail to demonstrate that the applicant's spouse would experience extreme hardship if he were to remain in the United States without his wife.

With regard to the hardship to [REDACTED] if joined his wife to live in Philippines, counsel indicates that [REDACTED] children are in the United States, and that with [REDACTED] age (67 years old) and health problems, he would find obtaining employment difficult, if not impossible. However, counsel has not demonstrated that [REDACTED] would be unable to support her husband in the Philippines.

Considered collectively, the AAO finds that the evidence fails to show that [REDACTED] would experience extreme hardship if he were to join his wife to live in the Philippines.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.