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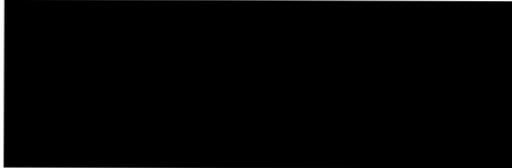
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: MANILA, PHILIPPINES

Date: JAN 04 2007

IN RE:



APPLICATION:

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

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application and the application for permission to reapply for admission were denied by the Officer-in-Charge, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on certification. The officer-in-charge's decisions will be affirmed and the applications denied.

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States by the officer-in-charge pursuant to section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for seeking admission within ten years of his deportation from the United States, and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The record indicates that the applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility and permission to reapply for admission in order to reside with his family in the United States.

The officer-in-charge denied the waiver application for failure to demonstrate extreme hardship to a qualifying relative and he denied the application for permission to reapply for admission pursuant to Chapter 42.3(d) of the Adjudicator's Field Manual, as its approval would not serve to make the applicant admissible. *Decision of the Officer-in-Charge*, dated October 2, 2006.

Counsel asserts that the factors were considered in isolation and not as a whole, and living life as fraught with danger as the Department of State describes is not an ordinary consequence of removal. *Brief in Response to Notice of Certification*, at 1-2, dated October 31, 2006. Counsel has also requested oral argument. *Id.* at 1. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, the necessity for oral argument has not been shown. Consequently, the request is denied.

The record includes, but is not limited to, counsel's brief, a doctor's letter for the applicant's spouse, the applicant's spouse's statement, financial documents and information on country conditions in the Philippines.

The record reflects that the applicant entered the United States on December 18, 1988 as a nonimmigrant visitor and he was authorized to remain until June 18, 1989. The applicant filed an asylum application on May 5, 1992 and it was administratively terminated on November 24, 1993. The applicant was granted voluntary departure, with an alternate order of deportation, until July 16, 1992. The applicant remained in the United States and he was subsequently removed on June 5, 2002. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until June 5, 2002, the date he was removed from the United States. The applicant is also seeking admission within ten years of his removal from the United States. Based on the record, the applicant is inadmissible under sections 212(a)(9)(A)(ii)(I) and 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(A) of the Act provides, in pertinent part:

- (A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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.

Section 212(a)(9)(B)(v) of the Act provides that:

(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.

In regard to the applicant's unlawful presence, he requires a waiver under section 212(a)(9)(B)(v) which is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 are relevant in section 212(a)(9)(B)(v) waivers as well since the same standard of extreme hardship is applied. These factors include the presence of 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 in the event that she resides in the Philippines or 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Philippines. The applicant's spouse states that she has two children. *Statement of the Applicant's Spouse*, at 1, dated April 28, 2006. She states that she has a brother, aunts and cousins in the metro Manila area. *Id.* at 2. The AAO notes that the applicant's spouse is originally from the Philippines and is therefore familiar with the language and culture. In regard to country conditions, the record includes a U.S. Department of State Travel Warning which details security concerns in the Philippines. *U.S. Department of State Travel Warning for the Philippines*, at 1, dated June 16, 2006. There is no indication that the applicant's spouse could not reside in a relatively safe part of the country. In addition, there is no evidence that the applicant's family has had any problems while residing in the Philippines.

The applicant's spouse states that relocating to the Philippines would require leaving her home, her job of eleven years and forfeiting her health insurance and retirement benefits. *Statement of the Applicant's Spouse*, at 2. However, there is no evidence that the applicant or his spouse could not obtain employment, housing and insurance in the Philippines. The record includes a letter from the applicant's spouse's physician of over one year who states that the applicant's spouse has had several bouts of depression and suicide ideations due to separation, and she has dyspepsia. *Letter from [REDACTED]* dated April 4, 2006. Residing with the applicant in the Philippines would plausibly alleviate her serious emotional difficulties as the source of the problem is separation. In addition, there is no indication that treatment for dyspepsia is not available in the Philippines. Based on the record, the AAO finds that the applicant has not demonstrated extreme hardship to his spouse in the event that she resides in the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse resides in the United States. As previously mentioned, the applicant's spouse's physician states that she has had several bouts of depression and suicide ideations due to separation and dyspepsia which can be exacerbated by stress and anxiety. *Letter from [REDACTED]* However, there is no recommendation of any treatment and the vagueness of the letter lessens its probative value. The record reflects that the applicant's spouse is working full-time as a nurse while raising two children on her own. *Statement of the Applicant's*

Spouse, at 1. In regard to financial hardship, the applicant's spouse states that she will have to abandon her home as she cannot afford the payments without the applicant's income. *Id.* at 2. There is no substantiating evidence of this claim. The record reflects that the applicant's spouse will face some difficulties without the applicant, however, the applicant has not demonstrated extreme hardship to his spouse in the event that she resides in the United States.

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. Therefore, the waiver application was properly denied by the officer-in-charge.

The applicant is also inadmissible under section 212(a)(9)(A)(ii)(I) of the Act as he is seeking admission within ten years of his deportation. The officer-in-charge denied the permission to reapply application, pursuant to Chapter 42.3(d) of the Adjudicator's Field Manual, as its approval would not serve to make the applicant admissible.

Chapter 42.3(d) of the Adjudicator's Field Manual states, in pertinent part:

Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Form 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)

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

As the Form I-601 was properly denied by the officer-in-charge, the I-212 was also properly denied since its approval would serve no purpose.

ORDER: The officer-in-charge's decisions are affirmed and the applications denied.