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U.S. Citizenship
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FILE:



Office: MANILA, THE PHILIPPINES

Date:

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the district director, Manila, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant is a native and citizen of the Philippines who, on or around September 17, 2003, applied for a K-3 nonimmigrant visa as the spouse of a United States citizen who had filed a relative petition on her behalf, for the purpose of awaiting the approval of the relative petition and availability of an immigrant visa, pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii). The relative petition filed on behalf of the applicant was approved on March 10, 2005. In adjudicating the K-3 nonimmigrant visa, the district director determined that the applicant was inadmissible to the United States under 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 over one year.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her United States citizen husband will suffer extreme hardship if she is required to remain in the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States on a B-1/B-2 nonimmigrant visa in 1993.¹ She did not depart the United States until 2003. However, she did not begin accruing unlawful presence until April 1, 1997, the date the unlawful presence provisions of the Act were enacted. As she departed the United States more than 360 days after April 1, 1997, the ten-year bar on admission was triggered.

The applicant is now seeking admission within 10 years of her 2003 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than 360 days. The applicant does not contest the director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General*—

(1) *Filing procedure*—

- (i) *Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

The applicant filed the instant Form I-601 on April 22, 2005 at the United States Consulate in Manila. The Department of State promptly forwarded the application to CIS, which denied the application on June 28, 2005.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant herself is not a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, so hardship to the applicant or her children may not be considered.

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 BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

¹ The applicant states that she obtained permanent residency in 1981, but voluntarily relinquished that status in Manila in 1984. This was confirmed by the Jacksonville CIS (then-INS) district office on April 6, 1996, when it stated the following: "[y]ou are no longer a permanent resident of the United States."

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 alien 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. In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant’s husband is a sixty-one-year-old citizen of the United States. As he was born in Kokomo, Indiana, his citizenship was obtained at birth. He and the applicant have been married since October 1, 1997. The applicant’s entire claim that her husband would face extreme hardship as a result of her inadmissibility is based upon separation from family. The applicant does not assert that her husband would suffer financially if she were not to return, nor does her husband have any medical concerns that would be exacerbated if he were to relocate to the Philippines to be with the applicant.

In her June 28, 2005 denial of the Form I-601, the district director stated the following:

A review of the documentation in the record, when considered in its totality[,] fails to establish the existence of hardship that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to immigrate to the United States. No other comments have been provided that would lead this Service to a finding that extreme hardship to your qualifying relative would ensue with the denial of this waiver request.

On appeal, the applicant submits a statement setting forth the extreme hardship she contends her husband would face if she is not allowed to enter the United States. The applicant states that their separation (the applicant’s husband is currently living in Jacksonville, Florida) is very hard on her husband, that he calls her every day, that he sends her money, that he suffers when people at his place of employment tease him about her not coming back, that he grew up in an orphanage, that his first wife used him, that he is close to insanity due to loneliness, that he is working long hours due to loneliness, and that everyone is worried about him.²

² The applicant’s husband has not submitted a statement describing the hardship he would face if the applicant is not permitted to enter the United States. Nor has she submitted evidence from a medical professional to support her assertion that her husband is close to insanity. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband will face extreme hardship if the applicant is refused admission. Particularly if he remains in the United States, the record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in the Philippines and the emotional hardship of separation, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the district director properly denied the waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the deportation or refusal of entry of a spouse.

Nor has there been discussion of any hardship that the applicant's husband would face if he were to relocate to the Philippines. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." See *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). The spouse's desire not to relocate does not warrant granting a waiver, in the absence of specific facts establishing that his doing so will result in extreme hardship to her. As noted, the applicant has not established this fact. The AAO therefore finds that the applicant has not established that her husband faces extreme hardship if he relocates with her to the Philippines.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The denial of the application for waiver of inadmissibility by the district director was therefore proper and is affirmed. Accordingly, this appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.