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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES, CA

Date: APR 29 2008

IN RE:



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)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the waiver application. 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 (U.S.) 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 in 1994. The applicant is married to a lawful permanent resident and has one U.S. citizen child. She seeks 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 lawful permanent resident spouse would suffer extreme hardship as a result of her removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated August 2, 2005.

On appeal, counsel asserts that the district director erred in denying the applicant's waiver application and failed to consider the hardship to the applicant's spouse and children. *Counsel's Brief*, dated October 25, 2005.

The record indicates that during her adjustment of status interview the applicant stated that she had entered the United States in 1994 using a Filipino passport and U.S. visitor's visa that did not belong to her.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Although the district director's decision indicated that hardship experienced by the applicant's children had been considered, the AAO notes that hardship experienced by the applicant or her children due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Accordingly, family separation will be given appropriate weight in this proceeding.

The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that he resides in the Philippines or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant’s waiver request. If 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 will consider the relevant factors in adjudication of this case.

The record of hardship includes counsel’s brief and two statements from the applicant’s spouse, dated June 7, 2004 and January 20, 2005. The applicant’s spouse states that he and the applicant have been married for seven years and have two children, one five year old daughter and a sixth month old daughter. He states that he is a full time student and the applicant is the sole supporter of the family. He states that he would suffer financially if the applicant was removed and that his daughters would suffer emotional and psychological distress as a result of the applicant’s inadmissibility. The applicant’s spouse asserts that with all the pressures and difficulties of raising a family alone, it is likely that he would seek psychotherapy. He states that he truly does not know how he would live without his wife and feels that he would be desperate and on the verge of a

nervous breakdown. The applicant's spouse asserts that his family is tight knit and that they always make time to spend together including attending church and visiting other family members. *Id.* Counsel states that the district director downplayed the serious economic hardship that the applicant's spouse would suffer as a result of the applicant's inadmissibility. *Counsel's Brief*, dated October 25, 2005. He states that although it is true that the applicant's spouse, who is attending school to become a nurse, could obtain employment at the present time, the quality of this employment would not be sufficient to provide for his family. Counsel also asserts that the district director erred in failing to consider the hardship to the applicant's children. *Id.* The AAO again notes that hardship to the applicant's children is not considered in 212(i) waiver proceedings, unless it is shown that the children's hardship would cause hardship to the applicant's spouse. The current record does not establish this connection.

The applicant's spouse also states that if his family relocates to the Philippines it would result in their children losing the right to an education. He states that in the Philippines education is extremely expensive, commercialized and unaffordable. *Spouse's Statement*, dated January 20, 2005. He asserts that the conditions in the Philippines are unlivable at times, there is a great deal of flooding and devastation by typhoons, and there is no hot water or drinking water. He also asserts that while he has health insurance in the United States, he would not be able to afford medical care for his family in the Philippines. Lastly, the applicant's spouse states that the unemployment rate in the Philippines is extremely high and a high percentage of college graduates are unemployed. *Id.* In his statement, dated June 7, 2004, the applicant's spouse states that his entire family lives in the United States and relocating to the Philippines has never been an option for his family due to economic problems, political unrest, and unemployment conditions. Counsel also contends that if the family relocates to the Philippines their medical insurance would be taken away and their educational opportunities would be greatly diminished. *Counsel's Brief*, dated October 25, 2005. He also states that the unemployment rate is extremely high in the Philippines and the chances of obtaining good employment are slim, even for people with a college education. *Id.*

The AAO notes that counsel submitted no supporting documentation to establish the claims of hardship made in the applicant's case. No documentation was submitted to support the statements made in regard to the country conditions in the Philippines, the emotional hardship that would be suffered by the applicant's spouse and/or children, or financial hardship. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the applicant's 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)). Moreover, without documentary evidence to support them, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 evidence of 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 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.