



U.S. Citizenship
and Immigration
Services

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FILE:

Office: MANILA

Date: OCT 30 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Manila, Philippines. 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The OIC found that, based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *Decision of the Officer in Charge*, dated June 13, 2006.

On appeal, the applicant asserts that his wife will suffer emotional and economic hardship should he be prohibited from entering the United States. *Statement from Applicant on Appeal*, submitted July 3, 2006.

The record contains statements from the applicant and his wife; a brief from counsel; copies of correspondence in connection with the applicant's pursuit of employment in the Philippines; a copy of the applicant's resume; a copy of the applicant's wife's passport; a copy of the applicant's wife's naturalization certificate; copies of the applicant's wife's professional certificates; a copy of the applicant's marriage certificate; a copy of the applicant's daughter's birth certificate; copies of bills for the applicant's wife; copies of evaluations of the applicant's wife's mental health, and reports on conditions 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.

In the present matter, the record indicates that the applicant was admitted to the United States on July 18, 2001 with authorization to remain until October 12, 2001. However, the applicant provided that he remained until February 2003. The applicant has not shown that he applied for or received an extension of his authorized stay. Accordingly, he accrued over one year of unlawful presence in the United States. He now seeks to reenter the United States as a permanent resident pursuant to a Form I-130 relative petition filed on his behalf by his U.S. citizen wife. Based on the foregoing, the applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 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.

On appeal, the applicant asserts that his wife will suffer emotional and economic hardship should he be prohibited from entering the United States. *Statement from Applicant on Appeal*, submitted July 3, 2006. He provides that his wife saw a psychiatrist after the denial of his Form I-601 waiver application due to the prospect of continued family separation. *Id.* at 1.

The applicant explains that he has been searching for a job since his arrival in the Philippines yet he has been unable secure one due to age discrimination. *Id.* He states that since he and his wife married on September 30, 2001 his wife has been supporting the family because he did not have work authorization. *Id.* He indicates that he remained at home and cared for their daughter. *Id.* The applicant provides that once he and his daughter moved to the Philippines, his wife had to economically support three households, including a mortgage on a home in Las Vegas, rent on an apartment in California, and economic support to the applicant and their daughter in the Philippines. *Id.* The applicant asserts that his wife would have to give up her job in the United States should she relocate to the Philippines, and they would lose their home. *Id.* at 2.

The applicant provides that economic conditions in the Philippines are poor, and that the country is experiencing political instability. *Id.* The applicant indicates that professionals have difficulty finding employment in the Philippines, and many individuals resort to crime. *Id.* The applicant states that health and sanitation conditions are poor in the Philippines, thus his family would experience hardship if compelled to live there. *Id.*

The applicant provided copies of internet correspondence to reflect that he transmitted his resume to employers in the Philippines, as well as a copy of his resume.

The applicant's wife stated that she has experienced difficulty since the applicant's departure from the United States. *Statement from the Applicant's Wife*, dated March 10, 2006. She explained that she does not wish to be alone and family unity is important to her. *Id.* at 2. The applicant's wife explained that her own parents separated and she does not wish for her own daughter to grow up in a separated home. *Id.* She stated that she resided in the United States by herself for approximately two years while the applicant and their daughter were in the Philippines. *Id.* at 2-3.

The applicant's wife provided that she went to a counselor when she discovered that the applicant's waiver application was denied. *Id.* at 3-4. She stated that she has endured emotional distress and physical symptoms such as allergies on her face and body. *Id.* at 4. She indicated that she would like to further her education, but that she would be unable to appropriately apply herself in her present circumstances. *Id.* at 5.

The applicant's wife listed her and the applicant's regular monthly expenses. *Id.* at 6.

The applicant's wife noted that she is a licensed dentist in the Philippines, but she claimed that she would have difficulty earning sufficient income there. *Id.* at 7.

The applicant provided an evaluation of his wife conducted by a neuropsychologist, Dr. [REDACTED], *Report from [REDACTED]*, Ph.D., dated September 17, 2005. Dr. [REDACTED] stated that the applicant's wife reported that she had visited a psychiatrist in the past, but that he found that she was experiencing normal emotional reactions to her circumstances and that no treatment was necessary. *Id.* at 1. Dr. [REDACTED] noted that the applicant's wife presented several options for her life depending on whether she remains in the United States or relocates to the Philippines, but each had negative attributes. *Id.* at 2. Dr. [REDACTED] did not find that the applicant's wife required further evaluation or treatment. *Id.* The applicant further submitted an evaluation of his wife conducted by another psychiatrist, Dr. [REDACTED]. *Report from [REDACTED]*, M.D., dated August 29, 2005. While Dr. [REDACTED] stated that the applicant's wife reported emotional difficulty due to the applicant's absence, he did not diagnose the applicant's wife with any disorders or find that treatment or follow-up sessions were required. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant explains that his wife is experiencing emotional hardship due to separation from him and their daughter. While the AAO acknowledges that such separation is emotionally difficult, the applicant has not shown that his wife is suffering unusual consequences that go beyond those commonly experienced by family members of those deemed excludable or inadmissible.

As discussed above, the record contains evaluations of the applicant's wife's mental health. However, the evaluations are of limited use, as they do not represent ongoing treatment or the existence of any mental disorders. Each of the medical professionals who evaluated the applicant's wife stated that no treatment or medication is required.

While the evaluations are helpful in giving an understanding of the background and challenges of the applicant's wife, they do not show that, should the applicant be prohibited from entering the United States, his wife will suffer emotional consequences beyond those ordinarily experienced by the families of those who are inadmissible.

In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant should she remain in the United States, yet the applicant has not established that she would experience emotional hardship that is greater or different than that typical to the family members of those deemed inadmissible.

The applicant suggests that his wife will experience economic hardship should he continue to reside outside the United States. However, the applicant has not established that his absence from the United States will result in substantial economic challenges to his wife. The record reflects that the applicant's wife is maintaining two residences in the United States. The applicant has not shown why two residences for one individual are required or why the applicant's wife could not sell or rent her home in Las Vegas, or cease renting her apartment in California to significantly reduce her expenses. It is noted that the applicant has not provided a clear record of his wife's income, thus the AAO is unable to ascertain the true impact his absence has on her economic situation.

The applicant claims that his wife must support him in the Philippines, as he is unable to secure employment. Yet, while the applicant provided evidence that he has submitted his resume to employers, he has not established that he is unable to secure any form of employment to meet his economic needs. While the applicant may have difficulty finding employment of his choice that relates to his past experience, he has not shown that he is unable to perform any other form of employment, or that no alternate employment is available.

Based on the foregoing, the applicant has not shown that his wife will experience extreme hardship should she remain in the United States without the applicant.

The applicant has not established that his wife will experience extreme hardship should she relocate abroad with the applicant. Should the applicant's wife return to the Philippines, she could maintain family unity and alleviate the emotional difficulty due to family separation.

It is understood that the applicant's wife wishes to continue her employment in the United States. However, the applicant has not shown that his wife would be unable to generate sufficient income in the Philippines by resuming her dental practice. The applicant's family owns a home in Las Vegas, and the applicant has not submitted sufficient documentation to reflect whether it could be sold at a profit to assist in the economic requirements of moving abroad.

The applicant's wife is a native of the Philippines, thus it is assumed that she is familiar with the language and culture of the country such that returning there would not present related challenges. It is further noted that the applicant has not clearly shown whether his wife has other ties to the United States, such as other family members. The applicant has not indicated whether his wife has family members in the Philippines. Accordingly, the applicant has not shown whether his wife would lose or gain family support by returning to the Philippines.

The applicant indicated that conditions in the Philippines are poor, with a weak economy and political instability. However, he has not described any personal experiences with political conditions in the Philippines that reflect that his wife would be subjected to dangerous or harmful circumstances. While he has indicated that he has had difficulty securing employment, the record does not sufficiently show that the applicant's wife would be unable to generate income such that they would suffer significant economic consequences.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the level of extreme hardship. 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)(9)(B) 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.