

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W. Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H3

FILE:

Office: BANGKOK, THAILAND

Date:

JAN 12 2009

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:

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Bangkok, Thailand, and 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 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 on March 4, 1991. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

The OIC found that although the applicant indicated on her waiver application that she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, the applicable ground of inadmissibility in the applicant's case is section 212(a)(6)(C)(i) of the Act for fraud. The OIC also found that based upon the evidence submitted, he could not conclude that the hardship suffered by the applicant's spouse as a result of her inadmissibility rises to the level of extreme hardship. The application was denied accordingly. *Decision of the Officer in Charge*, dated July 12, 2006.

On appeal, the applicant submits new evidence of her spouse's medical condition and states that her children and spouse are suffering hardships by having their family separated. *Form I-290B*, dated August 7, 2006.

The record indicates that the applicant admits to appearing for a visa interview at the U.S. Embassy in Manila in connection with an alien relative petition filed by a [REDACTED] on behalf of his daughter, [REDACTED]. Based on this application, supporting documentation and the interview, the applicant obtained a visa classifying her as the child of a lawful permanent resident. The applicant then entered the United States on an immigrant visa on March 4, 1991. The applicant returned to the Philippines on June 10, 2000.

The AAO finds that based on the applicant's record she is inadmissible under both section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act.

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.

In addition, the AAO finds the applicant inadmissible under 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The applicant entered the United States on an immigrant visa that was obtained through fraud and did not reflect the applicant's true identity. The applicant remained in the United States until June 10, 2000. Therefore, the applicant accrued unlawful presence from April 1, 1997, when the unlawful presence provisions were enacted, until June 10, 2000, the date she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her June 10, 2000 departure from the United States. Therefore, the applicant is 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 one year.

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.

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 and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant experiences or her U.S. citizen children experience due to separation is not considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings unless it causes hardship to the applicant's 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).

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).

In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) the court stated that, “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.” (citations omitted).

The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that he resides in the Philippines and 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. The AAO will consider the relevant factors in adjudication of this case.

In the Notice of Appeal to the Administrative Appeals Office (Form I-290B), the applicant states that she hopes the United States Citizenship and Immigration Services (USCIS) will not ignore the emotional, mental, and psychological hardships of their U.S. citizen children, who require the love, presence, management and close care of a mother and father. *Form I-290B*, dated August 7, 2006. The applicant also cites the officer-in-charge’s decision which quotes statements made by the applicant’s spouse regarding the hardships he is facing. Lastly, the applicant states that her spouse is suffering from multiple medical conditions, including hypertension, hyperlipidemia, and left ventricular hypertrophy. She states that his condition is such that he will be greatly hampered, if not paralyzed in his physical ability to work, support, take care and look after the general welfare of our thirteen year old U.S. citizen son. She states that her family needs her to help them survive this present crisis. *Id.*

The record of hardship includes a letter, dated July 24, 2006 from the applicant’s spouse’s doctor, [REDACTED], and copies of the applicant’s spouse’s medical records. [REDACTED] states that the applicant’s spouse is under his care for multiple medical problems, including hypertension, hyperlipidemia and left ventricular hypertrophy. *Letter from [REDACTED]*, dated July 24, 2006. [REDACTED] states that the applicant’s spouse sees a cardiologist and is currently on a regimen of medications. He also states that he feels it is medically necessary to have a preferred family member to watch and monitor the patient to ensure that he is able to attend his

scheduled appointments and receive his assigned medications. *Id.* The medical records submitted show that the applicant's spouse was found to have left ventricular hypertrophy. The other medical records submitted show the applicant's spouse's cholesterol levels and medical benefits that have been paid by the applicant's spouse's medical insurance for medical care provided to the applicant's spouse.

In a supplement to the applicant's waiver application (Form I-601), taken at the U.S. Embassy in Manila, the applicant states that she is the mother of two U.S. citizen children and that her eldest son is living in the United States with her spouse while her daughter is residing in the Philippines with her. *Supplement to Form I-601*, dated April 27, 2005. She states that it is her desire for the family to be reunited so that she and her spouse can, "establish a home having the proper family atmosphere conducive to our minor children's emotional, mental and psychological state of well-being and balance." The applicant states that she and her spouse have been married for ten years and separated for five of these years. She states that her spouse states that her son is becoming depressed because of being separated from her and that her daughter needs the care of her father. She also states that it is not good for a husband and wife to be separated from each other, which is contrary to the precepts of family living, and that denying her application would affect her children's emotional and mental growth as well as create financial hardship. *Id.*

The applicant's spouse states that he and his son are living with his uncle's family so that his son will have supervision while he is at work from 4:00pm to midnight. *Spouse's Affidavit*, dated February 18, 2005. He states that his daughter lives with the applicant in the Philippines because she is young and requires more care. He states that his family has been living apart since 2003 and that the long distance relationship has been extremely difficult for him and his children. He states that his life has been a constant battle to keep his sanity in order to provide financial support for his son, wife and daughter and to be both a father and mother to his son. The applicant's spouse states that his son cries whenever he talks to his mother, that his son misses the applicant tremendously and begs to be sent to the Philippines to rejoin her. He states that his son has been depressed and that his daughter is growing up without the benefit of having an older brother. He states that both he and the applicant find themselves lacking in familial support and that he needs the emotional and financial support of the applicant. *Id.*

The AAO notes that the statements on hardship refer to hardship suffered by the applicant's children. As stated above, hardship to the applicant's U.S. citizen children is not considered in section 212(i) or section 212(a)(9)(B)(v) waiver applications unless it is shown that hardship to the children is causing hardship to the applicant's spouse. In addition, statements made by the applicant and her spouse must be supported by the evidence in the record. 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)). The record does not support the applicant's statements and the statements by the applicant's spouse regarding financial and emotional hardship.

The applicant did submit documentation concerning the medical conditions of her spouse; however, this documentation does not detail any health risks inherent to these conditions, how the applicant's spouse's conditions are affecting his daily life and how not having the applicant in the United States creates extreme hardship in regards to these conditions. Furthermore, the applicant does not address the possibility of her spouse and son relocating to the Philippines and if this relocation would cause extreme hardship. For these

reasons, the AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

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 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.