



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

HF

JUL 27 2007

FILE:

[REDACTED]

Office: MANILA, PHILIPPINES

Date:

IN RE:

[REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 Officer in Charge, 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 is the beneficiary of an approved Petition for Alien Fiance(e), Form I-129F. The applicant seeks to enter the United States in order to marry his fiancée, however, he was found to be inadmissible to the United States pursuant to § 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 ten years of his last departure from the United States. He now seeks a waiver of inadmissibility pursuant to § 212(a)(9)(B)(v) of the Act.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish that his inadmissibility would cause extreme hardship to his U.S. citizen fiancée. The application was denied accordingly. On appeal, counsel asserts that the evidence establishes that the applicant's fiancée will suffer extreme emotional hardship if the applicant is not allowed to join her in the United States. Counsel further asserts that the applicant's fiancée is unable to marry the applicant in the Philippines, and her moral and religious standards preclude her living with him without getting married.

On appeal, counsel submits a memorandum of law, letters written by the applicant, his fiancée, his U.S. citizen parents, his fiancée's employer, and his fiancée's doctor, as well as other documentation. The record also contains evidence submitted with the original waiver application, including letters by the applicant's fiancée, her doctor, and her Employee Assistance Program (EAP) counselor. The AAO has reviewed the entire body of evidence in rendering this decision on 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.

The record reflects that the applicant entered the United States on April 4, 1991 as a visitor, and that he remained in this country until approximately May 1999. As there is no record that he applied for any status after his visitor visa expired, the applicant began to accrue unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until May 1999, when he departed the United States. He now seeks admission within ten years of that departure; thus, he is inadmissible to the United States under § 212(a)(9)(B)(II) of the Act.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 (intended) spouse or parent of the applicant. Hardship to the alien himself is irrelevant to § 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 § 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.

Counsel asserts that the applicant's fiancée would face extreme hardship if she relocated to her native Philippines in order to remain with the applicant, because she would be unable to marry him in that country. Counsel contends that the applicant's U.S. divorce would not be recognized in the Philippines, whose law does not allow divorce. Counsel asserts that the applicant's fiancée's religious and moral standards prevent her from living with the applicant without the benefit of marriage. The AAO notes that the evidence fails to show that the applicant and his fiancée are limited to marrying in either the Philippines or the United States. Furthermore, Article 26 of the Family Code of the Philippines states, in pertinent part:

Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 3637 and 38. (17a) . . . .

The evidence does not show that if the applicant and his fiancée married in a location outside the Philippines, their marriage would not be recognized in the Philippines.

Counsel also asserts that the applicant's fiancée would suffer extreme emotional hardship if she were separated from her two adult daughters, who would not accompany her to the Philippines. While the fiancée's anxiety in the face of a separation from her daughters is not taken lightly, the record does not show that this separation would cause her to suffer to a greater extent than other parents whose adult children live in a distant location.

Counsel contends that the applicant's fiancée will suffer extreme emotional hardship, leading to financial hardship, on account of a continued separation from the applicant. The record reflects that the applicant's fiancée received psychological counseling and anti-depressant medication during the summers of 2005 and 2006. The most recent doctor's letter, written by [REDACTED] and dated August 14, 2006, states that the applicant's fiancée suffered from depression and anxiety disorder, among other ailments. The doctor indicated that the patient was taking medication to treat her depression. The letter does not indicate that the petitioner's fiancée is incapacitated or unable to carry out her daily activities, or that she is in danger of becoming incapacitated in any way in the future. Although counsel, referring to the applicant's fiancée's letters describing her troubled previous marriage, asserts that her life's experiences have rendered her more susceptible to extreme emotional hardship in the present, the medical evidence on the record does not indicate that her emotional suffering can be considered extreme.

Counsel maintains that the applicant's fiancée was demoted in her job as a registered nurse because of the stress caused by the applicant's inadmissibility, resulting in a lower pay rate. The record includes an employment letter dated April 15, 2005 reflecting an hourly salary of \$43.29, and a later letter dated July 10, 2006 showing an hourly salary of \$36.09. The record does not contain documentation establishing the reason for the applicant's fiancée's employment change. Even if it were accepted that the applicant's fiancée changed jobs due to the applicant's inadmissibility, her most recent, lower salary does not constitute an extreme state of financial affairs. Moreover, lifestyle and financial challenges are common to cases where family members (or fiances, as in this case) are separated due to inadmissibility.

U.S. 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). 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), defined extreme hardship as hardship that exceeds 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. It is also noted that the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The AAO recognizes that the applicant's fiancée will endure hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of inadmissibility and does 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 § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.