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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

#5

FILE: [REDACTED] Office: NEWARK, NJ

Date: APR 21 2010

IN RE: [REDACTED]

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

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.

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


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a fraudulent passport. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated October 23, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on May 29, 2001; a letter from the applicant; a letter from [REDACTED] a letter from [REDACTED] counselor; a copy of [REDACTED] certificate of citizenship; a copy of the couple's U.S. citizen daughter's passport; copies of tax documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

In this case, the record shows, and the applicant admits, that he entered the United States using a passport obtained with a fraudulent birth certificate under the name [REDACTED] for [REDACTED]

which he paid approximately \$1,000. *Record of Sworn Statement*, dated March 20, 2007; *Letter from* [REDACTED], dated March 14, 2007. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, or should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant's wife, [REDACTED] states that an instant bond occurred when she met her husband. [REDACTED] contends the happiest day of her life was when she gave birth to their daughter and she saw her husband with his first child. According to [REDACTED] she cannot bear to see the pain in her daughter's eyes if her father were to depart the United States. [REDACTED] states she loves her husband and her family and wants to live in freedom. *Letter from* [REDACTED] dated March 16, 2007.

A letter from [REDACTED] counselor states that she was seen with the applicant and their daughter twice since March 13, 2007. The letter contends [REDACTED] complained of depression over the possible separation from her husband. The counselor states the "couple seemed very comfortable with each other and interact like a normal couple . . ." *Letter from* [REDACTED] dated March 15, 2007.

Upon a complete review of the evidence, the record does not establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [REDACTED] will endure hardship as a result of her husband's departure from the United States and is sympathetic to the family's circumstances. However, [REDACTED] does not discuss the possibility of moving back to the Philippines, where she was born, to avoid the

hardship of separation, and she does not address whether such a move would represent a hardship to her. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding the letter from [REDACTED] counselor, although the input of any mental health professional is respected and valuable, the AAO notes that the letter dated March 15, 2007, is based on two counseling sessions [REDACTED] had in the previous two days. *Letter from [REDACTED] supra*. The record thus fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. Furthermore, the letter does not indicate that any psychological testing was conducted and the counselor did not diagnose [REDACTED] with any mental health condition. The evidence does not show that the emotional hardship [REDACTED] has experienced or will experience is beyond what would normally be expected. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

The record contains copies of tax documents which show that in 2005, [REDACTED] filed taxes as the head of household and reported wages of \$31,285. In 2006, the couple filed a joint tax return with [REDACTED] wages reported as \$36,729 and the applicant's wages reported as \$26,578. This information indicates that [REDACTED] would experience a decline in household income without the applicant, but the evidence does not demonstrate that she would be unable to support herself and her child or otherwise suffer extreme financial hardship if her husband's waiver application were denied. The mere showing of some 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); *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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.