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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

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FILE: [REDACTED] Office: MILWAUKEE Date: JUL 20 2010

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Milwaukee, Wisconsin, and 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 having procured a nonimmigrant visa by willfully misrepresenting a material fact. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 26, 2007.

On appeal, the applicant, through counsel, states that the District Director misinterpreted the regulatory standards for determining extreme hardship. *Attachment to Form I-290B*, filed August 27, 2007. It is noted that counsel states on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B, that additional evidence will be submitted within 30 days. *Form I-290B*, filed August 27, 2007. However, the record does not reflect receipt of additional evidence. Therefore, the record must be considered complete

The record includes an affidavit from the applicant's husband detailing the hardship claim. *See Affidavit from [REDACTED]*, dated April 27, 2007 submitted with the Form I-601 waiver application. The record also includes a medical note indicating that the applicant was pregnant and her expected date of delivery was October 7, 2007. *See note from [REDACTED] M.D.* Also included in the record is the *United States Department of State Country Reports on Human Rights Practices* for the Philippines for the year 2006. *See Department of State Country Report for 2006*. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present application, the record indicates that the applicant married her husband on January 21, 2006 in the Philippines. In May 2006, the applicant applied for a B1/B2 nonimmigrant visa and represented to the consular officer that her marital status was "single." The applicant was issued a B1/B2 nonimmigrant visa in Manila, Philippines, on May 17, 2006; and, the applicant presented the visa to enter the United States and was admitted on June 27, 2006, as a B-2 nonimmigrant. On December 17, 2006, the applicant's United States citizen husband filed a Form I-130 on behalf of the applicant. On December 17, 2006, simultaneous with filing of the Form I-130 application, the applicant filed a Form I-601. On July 26, 2007, the District Director denied the Form I-601, finding the applicant attempted to enter the United States through misrepresentation and she failed to demonstrate extreme hardship to her United States citizen spouse.

The AAO notes that counsel does not dispute that the applicant misrepresented her marital status to procure a visa in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is irrelevant to a section 212(i) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 an affidavit dated April 27, 2007, the applicant's husband states that the applicant was expected to give birth to their child on October 7, 2007, that due to the applicant's medical problems associated with the pregnancy, there was a "possibility of miscarriage," and that he "was extremely concerned about the precarious medical nature of [the] pregnancy." The applicant's husband also states that he wants the child to get the "highest quality medical care possible," which, he claims is not available in the Philippines. The applicant's husband also attests that as the only wage earner it would be "very difficult

for [him] to function with an infant without [his] wife [redacted];” and, he expresses concern that if his wife returns to the Philippines with the child, she and the child would face problems that are common in the Philippines, such as violence against women and abuse of children, child prostitution, trafficking in persons, and other societal ills. The applicant’s husband references the *United States Department of State Country Reports on Human Rights Practices* for the Philippines for the year 2006. Although the applicant’s husband points to problems in the Philippines, it has not been established that the applicant and the child would become victims. The record does not support a conclusion that the applicant and the child would be prone to these societal ills. The AAO cannot determine, therefore, that the applicant and the child would be likely victims of these generalized societal problems. Furthermore, the AAO notes that the applicant and her child may experience some hardship in being separated from the applicant’s husband; however, the child is not a qualifying relative for a waiver under section 212(i) of the Act. The only qualifying relative is the applicant’s spouse.

Also, counsel points to the “financial impact” on the family if the applicant is removed from the United States; but, counsel does not submit evidence of the claimed financial impact. It is noted that the record reflects that from 1999 until June 2006, when the applicant came to the United States, the applicant had been employed as a Bank Officer in Makati, Philippines. There is no indication that the applicant would be unable to support herself and her child in the Philippines.

Counsel does not establish extreme hardship to the applicant’s husband if he remains in the United States, maintaining his employment, and continuing to provide financial support to his family. The AAO notes that as a United States citizen, the applicant’s husband is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. Moreover, the United States 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).

It is noted that the applicant does not claim hardship to her husband if he joins her in the Philippines. The AAO finds, therefore, that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in the Philippines.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 removed. The AAO recognizes that the applicant’s husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is not unusual to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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.