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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



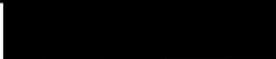
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Office: SANTA ANA

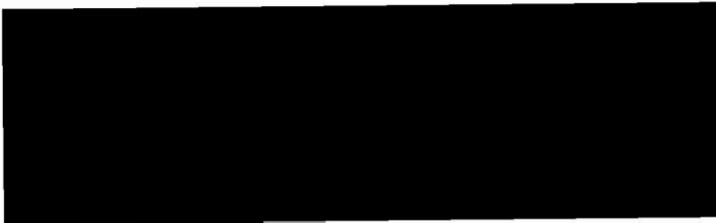
Date: MAR 06 2010

IN RE:



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:



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 Field Office Director, Santa Ana, California, denied the instant waiver application. 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 Republic of the Philippines (the Philippines). In a decision dated July 2, 2007 the field office director found that the applicant committed fraud or made a material misrepresentation in seeking an immigration benefit and is therefore 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).

The applicant seeks a waiver of inadmissibility pursuant to section 212(i)(1) of the Act in order to reside in the United States with his wife. The field office director also found that the applicant had failed to establish that the bar to admission would impose extreme hardship on a qualifying relative as per section 212(i)(1) of the Act and denied the waiver application accordingly. On appeal, counsel submitted a brief.

The record contains, among other documents, declarations from the applicant and his wife, marriage licenses, bank statements, utility bills, tax returns, previously filed immigration forms and supporting documents, letters from doctors and other medical documents, and an article entitled *Looking to 2015*, published by Social Watch Philippines.

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.

The record shows that on April 14, 1985, in attempting to secure an immigrant visa as the unmarried son of his mother, [REDACTED], the applicant misrepresented that he was single. Married people are not eligible for the visa category pursuant to which the applicant was applying. The applicant's misrepresentation of his marital status was therefore material. The record further shows that, on January 24, 1994 the applicant applied for admission to the United States by presenting a photo-substituted Philippines passport and misrepresenting that he was the person to whom that passport had been issued. Counsel has not disputed the applicant's inadmissibility on appeal. The AAO therefore affirms the field office director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides, in pertinent part:

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 . . . .

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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).

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

U. S. courts have stated, "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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may,

in itself, constitute extreme hardship.”) (Citations omitted.) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

An analysis under *Matter of* [REDACTED] is appropriate. The AAO notes that extreme hardship to the applicant’s wife must be established in the event that she accompanies the applicant to the Philippines and in the event that she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In an undated declaration, the applicant’s wife noted that her first husband died during February of 2005 and that her mother died during August 2005, at age 103. The applicant’s wife stated that she then began to suffer from depression. She stated that she met the applicant during November of 2005, and that based on his encouragement she consulted a psychiatrist, which she previously had declined to do.

The applicant’s wife further stated that her first husband left her some income properties that the applicant helps her to manage. She did not characterize the type or amount of assistance he renders, except to say that she would be unable to manage them without the applicant. She stated that she is now 62 years old, that she left the Philippines almost 40 years ago, and that she cannot return there because she cannot leave what she has in the United States.

In support of the applicant’s wife’s claim that she suffers from depression, counsel submitted a letter from a general practice physician and a letter from a psychiatrist. Both assert that the applicant’s wife suffers from depression. Both state that she is unable to tolerate additional stress. The psychiatrist further stated that the applicant’s wife “is on medication such as Paxil” and that he has referred the applicant’s wife for weekly psychotherapy.

The AAO notes that the psychiatrist’s letter is dated November 27, 2006 and states that the applicant’s wife has been under his care since November 27, 2006. This suggests that the applicant’s wife had seen the psychiatrist for the first time on that day, and that his diagnosis of Major Depression, his prescription of “medication such as Paxil,” his referral for weekly psychoanalysis, his conclusion that she is unable to tolerate any additional stress, and his drafting of a letter for use in this proceeding all followed from that single meeting and were accomplished on the same day. The

record contains no indication that the applicant's wife ever followed up on the suggestion that she seek psychoanalysis or that she ever filled a prescription for antidepressant drugs.

The letter from the general practitioner states, "[The applicant's wife] suffers from severe depression and anxiety syndrome." The basis for that assertion, whether it is based on the doctor's own observations or whether it is based on the opinion of the psychiatrist, is not stated.

The record contains no evidence to corroborate the applicant's wife's statement that she had a history of mental or emotional difficulties prior to the submission of the waiver application in this case. The date of the psychiatrist's letter suggests that the applicant's wife sought counseling only as necessary to obtain letters for use as evidence in this proceeding. Although both practitioners asserted that the applicant is unable to tolerate stress, they did not indicate how they formed that opinion or upon what facts it was based. Although they are accorded some evidentiary weight, the lack of detail in both letters renders them less valuable in the determination of whether the applicant's absence is likely to cause extreme hardship to the applicant's wife.

In a letter dated February 27, 2007 and in the brief submitted on appeal, counsel reiterated the claims made by the applicant's wife. Counsel also asserted, "Healthcare in the Philippines would be costly as it is mostly paid out-of-pocket and not through insurance," and, "Drugs are also costly in the Philippines, more so than other surrounding countries."

Counsel further asserted that the applicant's wife receives healthcare insurance through the applicant. Documents in the record confirm that the applicant maintains Blue Cross/Blue Shield coverage for himself and his wife.

The publication from Social Watch Philippines states that the *per capita* expenditure on health care in the Philippines is lower than in most other Asian countries. It does not otherwise discuss the cost of healthcare in the Philippines and does not, therefore, support the assertion that the cost of health care there is very high. A graph included in the article indicates that almost half of the expenditure on health care is "out-of-pocket," as opposed to being paid for by government programs or private insurance, for instance. The record does not contain any other evidence pertinent to counsel's assertion about the cost of healthcare in the Philippines. That same publication does state that the cost of medications is higher in the Philippines than in other Asian countries, but did not compare the cost of medications in the Philippines to the cost of medications in the United States.

Evidence in the record supports the applicant's wife's assertion that she and her late first husband owned property jointly. However, nothing in the record suggests that the applicant's wife is unable to sell the property at a profit or to obtain professional property management to ameliorate any financial hardship.

Counsel stated, "[The applicant's wife] has provided evidence of the difficulty of someone her age finding work in the Philippines." The article from Social Watch Philippines states that unemployment was then estimated at 11.3 in the Philippines.

The AAO notes that the applicant's wife was born during 1944 and accepts that employment may be difficult to obtain in the Philippines, especially for people of the applicant's wife's age.

The record contains two pages of the applicant's wife's 2006 tax return. Those two pages show total taxable income of \$21,081 and some additional untaxed social security income. A 2006 Form 1099 indicates that the Housing Authority of Los Angeles paid the applicant's wife \$23,971 during that same year, although that amount does not appear to be reflected in her tax return.

On an application for term life insurance which she signed on October 20, 2006, the applicant's wife stated that her individual income was \$2,800 per month, her household income was \$4,000 per month, and her net worth was then \$500,000. Although the record contains some utility bills, it does not contain an exhaustive list and evidence of the applicant's wife's recurring expenses.

Given her non-wage income, whether the applicant's wife is obliged to rely on her employment income for her support if she relocates to the Philippines is unclear. As such, the evidence is insufficient to show that the applicant's wife would suffer financial hardship if she accompanied the applicant to the Philippines.

Of course, being obliged to live outside the country one has chosen to make one's home engenders some degree of hardship. However, readjustment to life in one's native country after having spent decades in the United States is not the type of hardship that may typically be characterized as extreme, as most aliens who have spent time abroad suffer this kind of hardship upon their return. *Matter of Uy*, 11 I&N Dec. 159 (BIA 1965)

Similarly, being obliged to live separately from family members necessarily causes some degree of hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in section 212(i) of the Act, the hardship must be greater than the normal, expected hardship involved in such cases.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that, if the applicant returns to the Philippines, his wife will suffer extreme hardship, whether or not she accompanies him. The record does not contain sufficient evidence to show that the hardships faced by the applicant's wife, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen wife spouse as required under section 212(i)(1) of the Act. 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)(6)(C)(i) of the Act, the burden of proving eligibility rests 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.