



U.S. Citizenship
and Immigration
Services

H5

[Redacted]

FILE:

[Redacted]

Office: SANTA ANA, CALIFORNIA

Date:

MAR 10 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:

[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, Santa Ana, California, 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 entering the United States by presenting false entry documents. 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 spouse.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 5, 2007.

On appeal, the applicant, through counsel, asserts that the applicant entered the United States without inspection, and not by misrepresentation. *See appeal brief*, dated July 5, 2007. Counsel claims that the Field Office Director erred in requiring the applicant to file a waiver for misrepresentation. *Id.* at 5.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's husband, a letter from [REDACTED] regarding the applicant's husband medical conditions, and divorce and marriage documents for the applicant and her husband. 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.
- (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 initially entered the United States on November 15, 1989. On July 10, 1993, the applicant married [REDACTED] in California. On September 27, 1994, the applicant and [REDACTED] divorced. On June 28, 1997, the applicant married [REDACTED] in Texas. On February 13, 1998, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 3, 2003, the applicant and [REDACTED] divorced. On February 13, 2003, the applicant married her current husband, [REDACTED] a United States citizen, in California. On March 6, 2003, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed another Form I-485. On March 8, 2005, the applicant's Form I-130 was approved. On June 5, 2007, the Field Office Director denied the Form I-601, finding that the applicant misrepresented a material fact in order to gain entry into the United States and she failed to demonstrate extreme hardship to her qualifying relative.

Counsel contends that "[t]here is no evidence or admission that [the applicant] or anyone else presented her passport for inspection by a U.S. border patrol officer. In fact, throughout her adjustment application, [the applicant] has stated that she entered the United States 'Without Inspection.'" *Appeal Brief, supra* at 4. Counsel states that "[the applicant] has readily admitted that she entered the United States illegally. However, she did not do so by misrepresenting herself as someone else. Therefore, it is [their] contention that if USCIS continue its insistence that [the applicant] file for the § 212(i) waiver, it is error." *Id.* at 5.

The AAO notes that on March 8, 2005, during her interview for her petition for alien relative and under oath, the applicant stated that she obtained a visa to enter the United States through a "travel tour group." The applicant further stated that she "did not go to an embassy, they came to [her] house and [they] took photos." The applicant claimed that she thought the travel tour group was legal. The applicant indicated that she had previously applied for a visa through the embassy, but her visa application was denied. Additionally, in a statement dated May 2, 2005, the applicant states that after her visa application was denied, she "was frantic and desperate to come to the US immediately.... [She] talked to [her] friends and they told [her] to call a travel agency." The AAO finds that counsel's contention that the applicant did not enter the United States through misrepresentation to be unpersuasive.

The AAO notes that in *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), the Board of Immigration Appeals (Board) stated:

It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found.

The Department of State Foreign Affairs Manual also offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. For a misrepresentation to fall within the purview of INA § 212(a)(6)(C)(i), it must have been practiced on an official of the United States government, generally speaking, a consular officer or an immigration officer. See 9 FAM 40.63 N4.3.

A misrepresentation is generally material only if by it the alien received a benefit for which she would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). Thus, a misrepresentation is material if either the alien is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that she be excluded. 9 FAM 40.63 N61; see also *Matter of S- and B-C-*, *supra*.

The AAO notes that during the applicant's March 8, 2005 interview, the applicant stated that when she entered the United States, she thinks she was inspected by an immigration officer. Additionally, the applicant stated that she obtained her visa through a "travel tour group," that she did not go to the U.S. Embassy to acquire it, and that the "tour guide" had her passport at the time of inspection. The applicant has not produced either the original or a copy of the passport and/or visa, and the AAO has been unable to verify that the applicant ever applied for and was granted a U.S. visa. The AAO finds, therefore, that the record supports the determination that the applicant acquired and presented fraudulent documents to procure admission to the United States. The AAO notes that now counsel is asserting that the applicant entered the United States without inspection. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to adequately resolve the inconsistencies in the evidence. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to obtain a benefit under 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.

Counsel claims that the applicant's husband will suffer extreme hardship if the applicant is not allowed to remain in the United States. *See appeal brief, supra* at 6. In an affidavit dated July 3, 2007, the applicant's husband states if the applicant "is forced to relocate to the Philippines, that will mean that [he] will be forced to spend [his] days alone, and with no one to care for [him]." The AAO notes that medical documentation in the record establishes that the applicant's husband has been diagnosed with coronary artery disease, spinal stenosis, diabetes mellitus, and chronic kidney disease. In a letter dated June 19, 2007, [REDACTED] states the applicant's husband "depends on [the applicant] for lifting and housekeeping, primarily due to the spinal stenosis." Counsel states that the applicant's husband "can never hope to afford the numerous medical expenses that he will surely incur" in the Philippines. *Appeal Brief, supra* at 11. The AAO notes that there was no documentation submitted establishing that the applicant's husband will not be able to afford medical treatment in the Philippines, or that he cannot receive medical care in the Philippines, or that he has to remain in the United States to receive medical treatments. Counsel claims that "[at] 82 years of age and in poor medical health, [the applicant's husband] requires the daily assistance – physical and emotional – of [the applicant]." *Id.* at 9. The applicant's husband states that he has never lived outside the United States, he has never been to the Philippines, and he does not speak Tagalog. The AAO notes that the applicant's husband may experience some hardship in relocating to the Philippines, a country in which he has no previous ties; however, it has not been established that adjusting to the Philippines would cause him extreme hardship. Additionally, the AAO notes that if the applicant's husband joins the applicant in the Philippines, the applicant could continue to provide daily assistance to him.

Counsel claims that the applicant's husband "will be unable to obtain employment as a man of advanced age (82) and in poor medical health." *Appeal Brief, supra* at 11. The AAO notes that the record establishes that the applicant's husband has been retired since 1987 and he receives monthly pension, disability and retirement checks. The AAO notes that counsel submitted a newspaper article in which "it was reported...that among veterans, similar to [the applicant's husband], from World War I to the Persian Gulf, those who were most likely to commit suicide were veterans whose health problems prevented them from fully engaging in activities at home or work." *Id.* at 13. Counsel states "that denying [the applicant's husband] the daily companionship of [the applicant] will surely turn him into a lonely, helpless recluse, and would utterly undermine his will to live." *Id.* at 14. The AAO notes that other than counsel's statement, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband would suffer any emotional trauma if he relocated to the Philippines, or whether any emotional trauma would go beyond that experienced by others in the same situation. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in the Philippines.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, with access to medical care. The AAO notes that the applicant's husband may suffer

some emotional hardship if he remains in the United States; however, there is insufficient evidence of significant emotional trauma if the applicant and her husband were separated. Additionally, 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. Furthermore, the AAO notes that beyond generalized assertions regarding country conditions in the Philippines, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States or that her husband's financial situation, based on retirement benefits, would be adversely affected.

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 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(a)(6)(C)(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.