

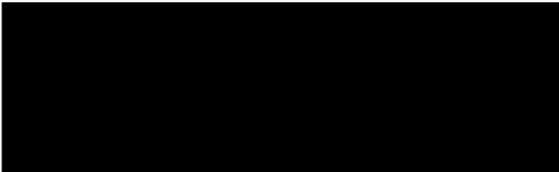
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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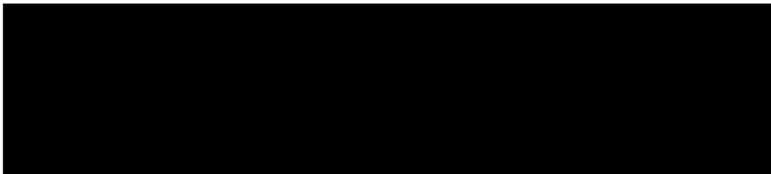
MAY 03 2010

IN RE: Applicant:



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:

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 District Director, Sacramento, California, and 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 was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident husband and U.S. citizen children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 11, 2006.

On appeal, counsel for the applicant contends that the applicant's U.S. citizen son has serious health problems and that he has been hospitalized twice since the applicant's interview in connection with her Form I-601 waiver application. *Statement from Counsel on Form I-290B*, dated October 12, 2006; *Brief from Counsel*, dated November 23, 2006. Counsel contends that the applicant's son's health problems will impact her husband should the present waiver application be denied. *Brief from Counsel* at 2-3.

The record contains a brief from counsel; statements from the applicant and her husband; a report on conditions in the Philippines; a copy of the applicant's marriage certificate; copies of birth records for the applicant's husband and children; a copy of the applicant's husband's permanent resident card; medical documentation for the applicant's son; a copy of the applicant's business license; letters from members of the applicant's religious group; a copy of the applicant's passport; tax, banking, and employment records for the applicant and her husband, and; documentation relating to the applicant's entry to the United States using a passport of another individual with her photograph substituted for that of the true owner. The entire record was reviewed and considered in rendering this decision.

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

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) of the Act provides, in pertinent part, that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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[.]

The record reflects that on or about April 20, 1994 the applicant entered the United States using the passport of another individual with her photograph substituted for that of the true owner. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure admission by fraud or willful misrepresentation. The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

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).

On appeal, counsel contends that the applicant's husband will experience hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* at 2-3. Counsel states that the applicant and her husband have two U.S. citizen children, ages eight and five (now 12 and eight). *Id.* at 1. Counsel explains that the applicant's son suffers from acute asthma and he requires continuous treatment. *Id.* at 2. Counsel provides that the applicant's son has also been diagnosed with migraine headaches. *Id.* Counsel contends that the applicant's husband took 12 weeks of family medical leave to care for their son, and that such leave is only granted by the applicant's husband's employer for serious medical conditions. *Id.* Counsel asserts that, although medical treatment may be available for the applicant's son in the Philippines, the applicant's husband does not have medical insurance that will cover treatment abroad. *Id.* Counsel provides that the applicant and her husband both previously resided in rural areas of the Philippines where there is less access to

medical care for their son. *Id.* at 2-3. Counsel states that medical care for children is lacking in the Philippines. *Id.* at 3.

Counsel explains that the applicant owns and manages a retail tile store as part of their family's income, and that the applicant's husband is untrained and does not work for the business. *Id.* at 2. Counsel asserts that denial of the present waiver application would cause the need to liquidate the applicant's business. *Id.* Counsel states that the applicant's husband would be unable to fund healthcare for their children in the United States or the Philippines should the applicant depart. *Id.*

The applicant provides a letter from her son's physician, [REDACTED] who states that the applicant's son has had asthma most of his life, and he requires a daily preventative inhaler and an albuterol inhaler if he has a cough, wheeze, or shortness of breath. *Letter from [REDACTED]*, dated October 6, 2006. [REDACTED] described facts of children with asthma in general, including that their condition can get worse quickly requiring urgent or emergent care. *Id.* at 1. He expressed concern that the applicant's son might reside in a location in the Philippines where emergent care cannot be easily obtained. *Id.*

The applicant provides a report from [REDACTED] in which [REDACTED] diagnosed her son with migraine headaches. *Report from [REDACTED]*, dated October 6, 2006. He recommended the use of acetaminophen or ibuprofen if needed for a headache. *Id.* at 1.

The applicant provides a certification form for family medical leave from [REDACTED] regarding her son's health in which he indicated the reason as: "child with chronic asthma may need mom to take time off work to care for him if condition flares." *Family Medical Leave Certification*, dated June 8, 2005. He noted that the applicant's son's parent requires intermittent leave due to a serious health condition, and that the periods of incapacitation cannot be predicted. *Id.* at 1. The applicant submits a letter from her husband's employer that shows that the applicant's husband was approved for family medical leave from June 20, 2005 until August 29, 2005. *Letter from the Applicant's Husband's Employer*, dated June 20, 2005.

The applicant's husband stated that he is close with the applicant and that he wishes for her and their family to reside together in the United States. *Statement from the Applicant's Husband*, dated December 8, 2004. He explained that he came to the United States in 1978. *Id.* at 1. He provided that he was previously married with two children, but that he endured a divorce which resulted in family separation and emotional hardship for his children. *Id.* at 1-2. He explained that he does not wish for his children with the applicant to experience such separation and the resulting negative psychological impact. *Id.* at 2. He stated that he would have difficulty caring for his two children without the applicant, in part due to their health problems. *Id.* He noted that his son has asthma, and that his daughter has asthma and eczema. *Id.*

Upon review, the applicant has not shown that a qualifying relative will suffer extreme hardship if the present waiver application is denied. The applicant has not shown that her husband will endure extreme hardship should he remain in the United States without the applicant. Counsel primarily addresses hardships to the applicant's son due to his health problems. Direct hardship to an applicant's children is not a basis for a waiver under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family

unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state or other challenges due to separation from the applicant will create emotional hardship for the qualifying relative. Thus, the AAO will examine hardship to the applicant's children to the extent that it has an impact on the applicant's husband.

The applicant's son has asthma for which he uses inhalers and receives supervision from a doctor. However, while [REDACTED] described the common effects of asthma in children, he did not indicate that the applicant's son's asthma is unusually severe. While [REDACTED] posited that the applicant's son suffers from migraine headaches, he did not indicate that they are unusually frequent or severe, or that they require medical attention beyond regular medical check-ups and non-prescription pain relievers. Counsel asserts that the applicant's son was hospitalized twice, yet the applicant has not provided any medical documentation to show that her son was hospitalized at any time. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has not shown that her son would lack access to medical care should he and the applicant's husband remain in the United States. The record shows that the applicant's husband's employer will accommodate his need to take leave from work to care for his son as needed.

The AAO acknowledges that the applicant's husband has concern for his son's health and well-being, and that the applicant and her husband have responsibility for monitoring their son's health to ensure he receives proper and timely treatment. Yet, the record does not show that the applicant's son faces health problems that create extreme emotional hardship for the applicant's husband.

The applicant's husband stated that his daughter has eczema and asthma. Yet, the applicant has not submitted any medical documentation for her daughter that shows that her daughter is suffering from conditions which impact her husband.

Counsel asserts that the applicant's husband's employment has been impacted by the need to take 12 weeks of leave from work to care for his son. However, although the applicant's husband's employer stated that he was legally entitled to a maximum of 12 weeks of family and medical leave, the medical documentation for the applicant's son does not support a need for the applicant's husband to take 12 continuous weeks of leave from work. [REDACTED] indicated that the applicant's son's parents may need to take leave from work if his condition flares. The applicant has not provided any medical documentation to support that her son required continuous parental care for a 12-week period.

Counsel states that the applicant's husband would suffer financial impact should the applicant depart the United States, as she owns and operates a tile business which would have to be liquidated. Yet, the applicant has not provided explanation of her business or recent financial documentation to show the profitability of the company, or to show whether she employs other workers who may continue to operate the business in her absence. The applicant has not submitted an account of her

household's expenses in the United States. Thus, the record does not show by a preponderance of the evidence that the applicant's husband would be unable to meet his expenses in her absence.

The applicant's husband expresses that he is close with the applicant and that he wishes to reside with her in the United States. The AAO acknowledges that the separation of spouses often results in significant emotional difficulty. Should the applicant's husband care for the two children alone, it is evident that he would encounter the challenges of acting as a single parent and he would be impacted by the emotional hardship experienced by his children. However, these are common consequences when an individual must reside abroad due to a prior violation of U.S. immigration law. The applicant has not distinguished her husband's emotional suffering from that which is commonly experienced by individuals who are separated from a spouse due to inadmissibility.

Federal court and administrative 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, *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), 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. *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.

All elements of hardship to the applicant's husband, should he remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should she depart the United States and he remain.

The applicant has not shown that her husband will endure extreme hardship should he relocate to the Philippines to maintain family unity. Counsel asserts that the applicant's son would lack access to proper medical care should he reside in the Philippines. However, while the applicant and her husband previously resided in less urban areas in the Philippines, the applicant has not shown that they would be unable to establish themselves in a location where emergency medical care is available should the need arise. As noted above, the applicant has not provided documentation that indicates that her son's asthma is particularly severe. While the AAO appreciates the concern that the applicant and her husband have for maintaining access to medical facilities, the record does not show that their son has needs that cannot be met in the Philippines in locations that are available to them. Thus, the applicant has not established that her son's health challenges would elevate her husband's emotional or financial challenges to an extreme level in the Philippines.

The applicant provides information about conditions in the Philippines, including a report on human rights conditions. However, the applicant has not established that her husband or children would face an unusual risk of harm, or that her family would reside in an area where all individuals face heightened security risks.

Counsel discussed the economic impact of the applicant departing the United States and her husband remaining. However, the applicant has not asserted that she and her husband would be unable to

engage in employment in the Philippines that would be sufficient to meet their economic needs there. As discussed above, the applicant has not provided adequate information about her tile business such that the AAO can assess whether she may hire others to operate it in her absence, resulting in continued income for her family. Thus, the applicant has not shown that her husband will endure significant economic challenges in the Philippines. As a related matter, the applicant has not shown that her family would be unable to fund any required healthcare for her children.

The applicant's husband has resided in the United States for a lengthy duration, since 1978. The AAO acknowledges that departing after this long residence will create emotional hardship due to the need to end his employment and the separation from friends and community. However, as the applicant's husband is a native and citizen of the Philippines, he would not face the need to adapt to an unfamiliar language or culture should he return there. The applicant's husband would not face separation from the applicant should he join her abroad. Thus, the applicant has not established that her husband will suffer unusual emotional consequences should he depart the United States.

Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should he reside in the Philippines to maintain family unity. Thus, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act. 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 regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.