

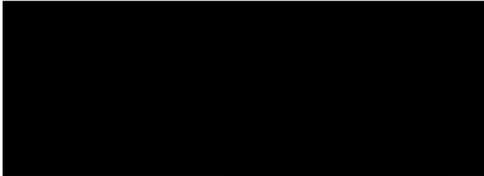
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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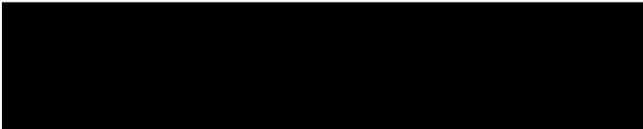
HS

FILE: [Redacted] Office: NEWARK, NJ Date: **MAY 19 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 Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Philippines who has resided in the United States since February 2, 2001, when he entered the United States at or near Los Angeles, California. He 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) based on his October 20, 2006 marriage to a naturalized United States citizen. 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 his spouse and child.

The Field Office Director concluded that the applicant failed to establish that his qualifying spouse would endure "extreme hardship," and denied the application accordingly. *See Decision of Field Office Director* dated January 28, 2008.

On appeal, counsel for the applicant asserted that the Field Office Director failed to consider the financial hardships on the applicant's spouse including the difficulty in paying the mortgage and the expenses related to the care of their child. In addition, counsel also explains the emotional hardship that the applicant's spouse will encounter if the applicant is removed. In his appeal brief, counsel contends that the applicant's spouse is the primary wage earner, making over \$100,000 per year as a nurse, and that her job is stressful and requires long hours. Moreover, counsel, on appeal, cites an unpublished decision of the AAO that he claims supports the applicant's case, yet he failed to provide a copy of the decision. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Aside from the appeal brief provided by counsel, no evidence was provided on appeal.

The record contains the following evidence; an appeal brief, a notarized affidavit from the qualifying spouse, the qualifying spouse's naturalization certificate, the applicant's marriage and birth certificate, tax returns and a written statement from the applicant regarding his use of fraudulent documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) 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:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 case, the record reflects that the applicant sought admission into the United States on February 2, 2001, by presenting a fraudulent Philippines passport and a fraudulent United States non-immigrant visa.¹ The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his wife, [REDACTED], and as aforementioned, his Form I-130 has already been approved.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it

¹ Note also that the applicant acknowledged in a written statement that he purchased a second fraudulent visa in his own name in order to procure a social security number and to work in the United States.

has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). 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. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the qualifying spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect applicant’s spouse.

The evidence provided which specifically relates to the applicant’s hardship includes the qualifying spouse’s affidavit, as well as the appeal brief submitted by counsel on behalf of the applicant.

In her affidavit, the qualifying spouse asserts that she would suffer financial hardship, should her husband be forced to leave the United States. She states that she just purchased a new home, and paying for the mortgage and other expenses “is unthinkable without [her] husband to support [her] and share the responsibility with.” However, the record contains no financial documentation to demonstrate the applicant’s contribution to the family income. Moreover, the applicant failed to provide evidence to document his family’s expenses, such as mortgage payments, car payments, credit card obligations, childcare or other expenses, in order to show how such expenses may pose a financial burden upon his wife consistent with a finding of an extreme hardship.

In addition, counsel’s appeal brief contends that the applicant spouse’s salary is “insufficient to pay a child care worker on a full time basis” due to the nature of her job as a nurse, e.g. long, irregular hours. This assertion was also not supported by any evidence, such as the cost of child

care in their area or bills for current childcare expenses. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The current record does not establish that the applicant would not be able to afford childcare. Moreover, the record failed to document the existence of a marital child with a birth certificate or other such documentation.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In addition to the financial hardship referenced above, the record reflects that the qualifying spouse could encounter emotional hardship due to separation from her husband. Her affidavit claims that her job is stressful, and that her husband offers her support and strength. She further expresses that her life would be "unbearable" without such support, especially with a young child. According to the Application for Waiver of Grounds of Inadmissibility (Form I-601), the applicant's parents are Legal Permanent Residents, and live in New Milford, New Jersey like the applicant and his family. Therefore, it appears the applicant could potentially seek some support from her in laws. Nonetheless, even if the applicant's spouse experiences emotional hardship due to her separation from her husband, this is a common result of separation and such hardship is insufficient to warrant a finding of "extreme hardship."

If the applicant's spouse relocated to the Philippines, she would no longer experience the emotional hardships associated with separation or bear the financial hardships of being the sole income provider. The applicant's spouse would likely lose her employment if she left the United States, but this is a common result of removal or inadmissibility—the applicant has failed to submit detailed evidence concerning the availability of employment opportunities in the Philippines. The record reflects that the applicant's spouse is a native of the Philippines. Therefore, she is unlikely to experience the hardships associated with adjusting to a foreign culture. The applicant's spouse has not addressed whether she has family ties there, and the AAO is thus unable to ascertain whether and to what the extent she would receive assistance from family members.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, 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 has failed to establish extreme hardship to his United States Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.