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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

PUBLIC COPY



#5

FILE: [Redacted]

Office: NEWARK

Date:

JAN 05 2011

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 \$630. 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 the Philippines. The record indicates that on August 4, 1997, the applicant procured entry to the United States by using a passport and visa belonging to another individual. The applicant was thus found to be inadmissible 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 gained entry into the United States 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 reside in the United States with her U.S. citizen spouse and U.S. citizen children.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 4, 2007.

In support of the appeal, counsel submits a brief, dated November 2, 2007, a declaration from the applicant's spouse, dated October 1, 2007, and a psychological evaluation from [REDACTED] Psy.D., dated August 22, 2006. 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, that:

- (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.

Counsel does not dispute that the applicant procured entry to the United States by using a passport and visa belonging to another individual. The AAO finds, therefore, that the applicant is inadmissible 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 gained entry into the United States by fraud or willful misrepresentation.

Section 212(i) of the Act provides 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 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 list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant’s spouse, a United States citizen, is the only qualifying relative and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant’s spouse.

The applicant’s spouse states that he will suffer extreme emotional and financial hardship were he to reside in the United States while the applicant relocates abroad due to her inadmissibility. He states that “his life has no meaning at all” without his wife and children by his side, and he has been “devastated” by the denial of his wife’s adjustment application. In addition, the applicant’s help with caring for their three young children and performing parental roles, including doing homework with them, is vital, and he cannot care for his children by himself. Counsel states that the applicant’s spouse works night shifts in mechanical maintenance and the applicant is employed part-time as a clinical care technician, and that the applicant and her spouse are the children’s only caretakers. While the applicant’s spouse may experience some hardship as a result of separation, it has not been established that he will be unable to care for the children in the applicant’s absence or that such responsibilities will result in hardship that is beyond that which would be expected as a result of separation.

The applicant’s spouse also states that his wife works as a clinical care technician and plays a crucial role in helping him care for his two elderly parents both of whom need help preparing their food and daily activities. He states that he has several siblings in the United States but his parents choose to live with his family. It is noted, however, that the preference of his parents to live with the

applicant's spouse rather than with his other siblings indicates that his parents have alternative living arrangements that may relieve the applicant's spouse of the responsibility for his parent's daily care. Furthermore, the applicant's spouse does not provide evidence that his parents live with him and evidence of the nature and extent of care his parents require and receive from the applicant. Without this evidence, an assessment cannot be made of the extent of hardship, if any, the applicant's spouse would suffer in the absence of the applicant if he has to perform the applicant's role in caring for his parents and whether such hardship, if any, would be extreme.

A psychological evaluation from [REDACTED] concludes that the applicant's spouse is "experiencing a significant level of affective distress" due to anxiety over separation from the applicant. Dr. [REDACTED] states that the applicant's spouse is very emotionally attached to the applicant and depends on her to assist him with the care of their three young children and his elderly parents. Though the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the counselor. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of exceptional hardship.

The applicant's spouse states that without the financial contribution from the applicant they will lose the house because he cannot pay the \$1,415.93 monthly mortgage and \$7,344.00 annual property tax alone. However, the applicant does not provide evidence of the family's income and expenses. The applicant indicates that he and his wife are employed, but he does not indicate their earnings, nor does he provide a breakdown of the household bills for their home in the United States, and the expenses he will incur to maintain a separate household in the Philippines. Without details of the family's income and expenses, the AAO is unable to assess the nature and extent of financial hardship, if any, the family will face. It is noted that the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States.

The AAO recognizes that the applicant's husband may endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse references the problematic economic and social conditions in the Philippines. Counsel further notes that the applicant's spouse would have to leave his elderly parents and his siblings and relocate to the Philippines. Also, Dr. [REDACTED] outlines the reasons the applicant's spouse has given for not wanting to relocate to the Philippines, including the hardships his children would suffer due to substandard academic and health conditions, such as pollutants leading to acute respiratory diseases, and the problematic economy with a low prospect of suitable employment.

In support, the AAO notes that the U.S. Department of State has issued a travel alert for the Philippines. As noted by the U.S. Department of State:

U.S. citizens traveling, living, and working throughout the Philippines are urged to exercise heightened caution in public gathering places where events may occur in relation to the May 2010 Philippine elections and June inauguration. In past election years, deaths have occurred because of election-related violence, even in the period of time following election dates and inauguration ceremonies. U.S. citizens should exercise caution when traveling in the vicinity of demonstrations since they can turn confrontational and possibly escalate to violence.

Travel Alert-Philippines, U.S. Department of State, dated April 2, 2010.

The record reflects that if the applicant's spouse would choose to relocate to the Philippines after residing in the United States since 1982, he would have to leave his support network and his long-term gainful employment, and he would be concerned about his and his children's safety, health, academics, and financial well-being at all times while in the Philippines. It has thus been established that the applicant's spouse would suffer hardship beyond that which would normally be experienced as a result of inadmissibility.

However, as discussed above, a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband in the United States caused by the applicant's inadmissibility to the United States. It is noted that counsel points to favorable factors in assessing the applicant's eligibility for a waiver. However, 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.