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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
and Immigration
Services

#6

FILE:

Office:

Date:

AUG 17 2010

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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).

Thank you,

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Manila, Philippines. 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 Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to his spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated January 3, 2008.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife [REDACTED] indicating they were married on February 14, 2000; three affidavits from [REDACTED] an affidavit from the applicant; a copy of [REDACTED] father's death certificate; a copy of the U.S. Department of State's Travel Warning for the Philippines and other documents addressing country conditions in the Philippines; three letters from [REDACTED] physicians, copies of her medical records, and a copy of her prescription medication; two psychological evaluations for [REDACTED] [REDACTED] numerous letters and affidavits of support; copies of financial and tax documents; copies of emails between the applicant and his wife; copies of pictures of the applicant and his family; copies of pictures of the applicant's house in the Philippines after a typhoon; an Order from an immigration judge; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

....

(ii) *Other aliens.* Any alien not described in clause (i) who –

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal . . . is inadmissible.

(iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant entered the United States on November 4, 1994, with a visitor visa and was authorized to remain until May 1995. The applicant filed an application for asylum with the Newark Asylum Office, which was referred to an Immigration Judge in October 1995. The applicant was placed in deportation proceedings and the Immigration Judge denied his asylum application. The applicant was granted voluntary departure until June 24, 1996 with an alternate order of deportation. The applicant did not timely depart the United States and remained until he was removed on March 8, 2002. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his removal from the United States in March 2002. Therefore, the applicant accrued unlawful presence of over four years. He now seeks admission within ten years of his March 2002 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure. In addition, the applicant is also inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Act as an alien who has been previously removed. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. [REDACTED] (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. 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.

In this case, the record reflects that the applicant wed [REDACTED] on February 14, 2000, more than four years after he was placed in deportation proceedings and more than three years after the expiration of his voluntary departure period. Therefore, the equity of their marriage, and the weight given to any hardship [REDACTED] may experience, is diminished as they began their marriage with the knowledge that the applicant might be removed from the United States and not permitted to re-enter. [REDACTED]. *INS*, 972 F.2d 631, 634-35 (5th Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (a "post-deportation equity" need not be accorded great weight).

[REDACTED] states that her parents divorced when she was five years old and that her father left for the United States when she was two years old. She contends she was raised by her grandmother after her mother left the Philippines to work in Saudi Arabia. [REDACTED] states that she came to the United States in 1991 to live with her father when she was thirteen years old and that she cannot bear the thought of being separated from her husband for ten years, the way she had been separated from her parents. According to [REDACTED] her father was removed from the United States in 1999 and she was devastated. She states that in 2002, shortly after her husband was removed from the United States,

she visited him in the Philippines. She states it was terribly hot there, that she was sick for the first couple of days, and that she "experienced horrible culture shock." In addition, she states that it was scary to walk the streets in the Philippines and that there are many stories of kidnapping and crime. According to [REDACTED] her husband was robbed at knifepoint soon after he returned to the Philippines, and his sister was mugged on the street and had her purse stolen. [REDACTED] contends she is scared for her husband's safety in the Philippines. In addition, she states that it was devastating to leave her husband in the Philippines. She states that when she returned from the Philippines, she developed chronic insomnia, became very depressed, and was diagnosed with diabetes and high cholesterol. She also contends her doctor found "a spot on [her] liver" and that she only menstruates once a year. According to [REDACTED] her doctor stated that she is under too much stress and told her that her diabetes could be controlled with proper diet and medication. However, she claims that she stopped taking her medication because it made her tired and depressed. She states she did not take care of herself and her diabetes got out of control. She states she started taking insulin in March 2008. [REDACTED] contends her depression will only be alleviated when she is reunited with her husband. She states she does not seek psychiatric or psychological treatment "because it is expensive and [she] do[es] not have a mental illness such as [REDACTED]"

In addition, [REDACTED] states that her husband is currently working at the Inter-Continental in the Philippines in customer service. She states he has a degree in business management and that it took him two years to find a job. [REDACTED] claims he earns \$200 per month, which covers only the rent. She states she sends him \$200 per month. [REDACTED] further states that her husband lives in Quezon City by himself and that "[h]is apartment gets flooded every Typhoon season." She contends that one time, "the water was up to his shoulders [and h]e had to move his things up from the living room and bring them upstairs."

Furthermore, [REDACTED] contends she attends a community college and would like to transfer to a university, but that she has to work full-time in order to support both her expenses in the United States and her husband's expenses in the Philippines. She states that she was laid off in January 2006 after having worked at the same company for seven years. She states she has been unable to find another job.

More recently, [REDACTED] states that her father passed away in September 2009 and that she went back to the Philippines to take care of his funeral arrangements. She contends her father would still be alive if he lived in the United States because he had diabetes and the Philippine government purportedly does not have enough programs for people who need medical help. According to [REDACTED] on the day she was scheduled to depart the Philippines, [REDACTED] hit the [REDACTED] destroying [REDACTED]. She states that her husband's house was under water in seconds and that if he had not been at the airport with her, he could have died if he had been at home. She contends her husband lost everything and that the house is uninhabitable.

[REDACTED] states she cannot move to the Philippines to be with her husband because in order to work as a phlebotomist in the Philippines, she would need a Medical Technician degree, which she does not have. She claims all of her friends and family live in the United States and that she lives with her

brother, who is a lawful permanent resident. *Affidavits of Devorah Razel Rollo Sacapanio*, dated October 3, 2009, March 23, 2008, and February 27, 2006.

A letter from [REDACTED] physician states that she was diagnosed with diabetes in 2003. According to the physician, [REDACTED] diabetes is not well controlled. Her treatment includes consultations with a nutritionist and endocrinologist, oral medication, and insulin. [REDACTED], dated March 19, 2008, and November 19, 2007; [REDACTED] dated September 26, 2007.

The applicant states that he did not leave the United States during the time he was granted voluntary departure because his mother died of cancer in the United States. He contends he had no home to return to in the Philippines and that he wanted to stay to see if he could find another legal means of staying in the United States. The applicant states that in 1998, he proposed marriage to [REDACTED] and "told her everything about [his] immigration status." He contends they had a small wedding and were saving money for a large, church wedding. In addition, the applicant contends he is extremely worried about his wife's health. He states that she already had diabetes when he met her, but that it has become much worse since they separated. He also states that his wife's liver has been affected due to the medications she takes to normalize her menstrual cycle and that her vision is deteriorating due to diabetes. According to the applicant, his wife is working hard to send him money in the Philippines and also helps financially support her mother and siblings. The applicant states that his wife comes from a broken family and that she never sees her father, who was deported, her birth mother, whom she lost contact with when she was young, and now, her husband. The applicant claims his wife cannot move back to the Philippines because she is helping to take care of her family. *Affidavit of Ray Jackson M. Pangilinan*, dated July 22, 2005.

A psychological evaluation states that [REDACTED] moved to the United States when she was thirteen years old to live with her father. The evaluation states that she moved in with the applicant in 1999, and that in 2001, they moved in with [REDACTED]. According to the psychologist, [REDACTED] Sacapanio works full-time and earns \$14 per hour. She reportedly helps her step-mother support the family and also sends money to her husband in the Philippines. [REDACTED] contends [REDACTED] visited her husband in the Philippines for one month and that it was extremely difficult for her to separate from him. [REDACTED] purportedly has difficulty sleeping, suffers periods of frequent crying, and does not leave the house much other than to go to work. The psychologist states that [REDACTED] "appears to be suffering from depression . . . in response to the separation from her husband, as manifested in frequent bouts of tearfulness and ongoing insomnia." According to the psychologist, [REDACTED] stated that she would move to the Philippines with her husband, but claimed that she is unable to do so due to her financial obligations to her family. [REDACTED] also stated that it would be hard to move back to the Philippines as the United States is now her home and her siblings live here. The psychologist concludes that [REDACTED] would suffer extreme emotional hardship and depression if she remained separated from her husband, and would suffer from extreme emotional and financial hardship if she moved to the Philippines to be with her husband. [REDACTED] by *Gina Hassan*, dated July 10, 2002.

A second psychological evaluation for [REDACTED] states that she was re-evaluated on April 29, 2005, as more than two years had passed since her last evaluation. The psychologist states that [REDACTED] continues to work full time at the same company, but is worried about the stability of her job. The evaluation also states that the applicant found a job in the Philippines, but reports that "most of his jobs are short-lived." According to the psychologist, [REDACTED] was diagnosed with diabetes in 2002, is on medication, must watch what she eats, must drink frequently, and must see her doctor every month. However, [REDACTED] purportedly forgets to take her medication, forgets to drink, and had not seen her doctor in over six months. The psychologist states [REDACTED] has gained weight, spends a great deal of time in bed, has difficulty sleeping, and rarely socializes. The psychologist notes that [REDACTED] appearance was markedly different from her appearance two years prior." According to the psychologist, [REDACTED] "appears to be struggling with a mood disorder," and considering "the degree and longevity of her depression seem[s] consistent with a diagnosis of Major Depressive Disorder." [REDACTED] by [REDACTED], dated June 6, 2005.

Letters from friends and family members describe the emotional hardship [REDACTED] has suffered. [REDACTED] brother, [REDACTED], states that after the applicant was removed, [REDACTED] fell apart and that she cried and did not eat for days to the extent that his family felt they might need to take her to the hospital. [REDACTED] dated February 27, 2006. [REDACTED] states that her daughter used to go out, but now rarely does. In addition, [REDACTED] mother states that her daughter has diabetes and needs medication for it. [REDACTED] mother fears that if her daughter moves back to the Philippines, she will not be able to get her medication and her condition might get worse. According to [REDACTED] mother, her daughter lost her job recently. [REDACTED] dated February 26, 2006. See also, e.g., [REDACTED] dated October 28, 2005 (stating that [REDACTED] has been depressed and has gained a lot of weight); *Affidavit of [REDACTED]*, dated October 21, 2005 (stating that [REDACTED] has experienced extreme financial and emotional hardship); [REDACTED] dated October 15, 2005 (stating that [REDACTED] has been just misery and loneliness" since her husband's departure).

After a careful review of the record, it is not evident that the applicant's wife has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if [REDACTED] had to move back to the Philippines, where she was born, to be with her husband, she would experience extreme hardship. The record shows that [REDACTED] has diabetes and that it is not well controlled. [REDACTED] dated March 19, 2008. In addition, the AAO takes administrative notice that according to the U.S. Department of State, although "[a]dequate medical care is available in major cities in the Philippines, . . . even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. Medical care is limited in rural and more remote areas." Moreover, serious medical problems can cost several thousands of dollars and, in some cases, hospitals in the Philippines have withheld lifesaving medicines and treatments for non-payment of bills. *U.S. Department of State, Country Specific Information, Philippines*, dated May 11, 2010. Furthermore, [REDACTED] expresses concerns about safety in the Philippines and states that her husband and sister-in-law were both victims of robbery in the Philippines. [REDACTED] dated February 27, 2006.

The U.S. Department of State has issued a Travel Warning for the Philippines, urging U.S. citizens to exercise extreme caution in the Philippines. The Travel Warning discusses the "continuing threats due to terrorist and insurgent activities," and states that "[k]idnap-for-ransom gangs are active throughout the Philippines and have targeted foreigners." *U.S. Department of State, Travel Warning, Philippines*, dated April 2, 2010. The AAO recognizes that although [REDACTED] was born in the Philippines, she has lived continuously in the United States for twenty years since she was thirteen years old. If she had to move back to the Philippines, she would need to readjust to a life in the Philippines after having lived in the United States her entire adult life, a difficult situation made even more complicated given her medical condition. In sum, the cumulative hardships [REDACTED] would experience if she had to move to the Philippines is extreme, going beyond those hardships ordinarily associated with deportation.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the couple's circumstances, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The BIA and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, [REDACTED] 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, [REDACTED] 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. *See also Hassan v. [REDACTED]* (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).

Regarding the psychological evaluations, although the input of any mental health professional is respected and valuable, the AAO notes that the two evaluations in the record are based on two separate interviews the psychologist conducted with [REDACTED] on July 2, 2002, and April 29, 2005. The record thus fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. In addition, there is no evidence that there is a history of treatment for depression. Moreover, the conclusions reached in the submitted evaluation, being based on two interviews conducted almost three years apart, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

Regarding the financial hardship claim, although the record contains voluminous documentary evidence, the AAO finds that the hardship is not extreme. Although copies of the applicant's pay stubs in the record indicate the applicant worked at Destiny, Inc. in 2004 and World of [REDACTED] Inc. in 2005, tax documents for 2004 and 2005 indicate the applicant was "unemployed." *2004 and 2005 Income Tax Return for [REDACTED] with No Dependents (Form 1040EZ)*. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective

evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In any event, the tax returns in the record show that [REDACTED], respectively. Furthermore, [REDACTED] submitted a Form I-864, affirming she would financially support the applicant based on her salary alone of [REDACTED] *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated February 26, 2002. Moreover, although the record contains evidence that the couple has a monthly car payment of [REDACTED] the applicant does not address [REDACTED] regular, monthly expenses, such as the amount of rent or mortgage she pays for the apartment or house she lives in with her brother. In sum, although the AAO does not doubt that [REDACTED] has experienced some financial hardship since her husband's departure from the United States, the AAO finds that based on her income alone, the level of hardship is not extreme. Further diminishing the weight given to any financial hardship [REDACTED] may experience is that the couple married after the applicant was ordered deported, as explained above. [REDACTED] (1981) (economic detriment to qualifying family members is insufficient to warrant a finding of 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).

With respect to [REDACTED] diabetes, although the AAO acknowledges that her condition is currently not well controlled and could lead to long term problems, [REDACTED] dated March 19, 2008, significantly, [REDACTED] nor her physician contend she requires any assistance due to her condition. Even assuming [REDACTED] requires some assistance due to her condition, there is no evidence that any assistance she may require could not be provided by another family member, such as the brother with whom she lives.

Finally, to the extent the applicant [REDACTED] would like to start a family, there is no evidence in the record, such as a letter in plain language from a health care professional, indicating that either the applicant or his wife have a serious medical condition for which they need treatment or assistance and, therefore, the evidence does not show that these circumstances rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.