U.S. Department of Justice

Immigration and Naturalization Service

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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [redacted] Office: SAN FRANCISCO, CA Date: FEB 28 2003

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)

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

The applicant is a native and citizen of the Philippines who was found by the district director 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 into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved petition for alien relative[1]. He seeks the above waiver in order to remain in the United States and reside with his spouse and child[2].

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel asserted that the district director failed to consider relevant facts which contribute to extreme hardship on the part of the applicant's spouse. Specifically, counsel asserted that if the applicant is removed from the United States, his spouse will be raising the couple's child as a single mother, will bear the burden of playing the roles of both mother and father, and will be the child's sole source of financial support. Counsel also stated that if the applicant's spouse and child were to relocate to the Philippines with the applicant, they would face a life without a decent future which, by itself, constitutes extreme hardship.

The record reflects that the applicant procured admission into the United States on July 23, 1997 by willfully misrepresenting himself

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[1] The record reflects that the applicant's spouse, a native of the Philippines, was admitted to the United States as a lawful permanent resident on September 20, 1987. Although the applicant's waiver application, the district director's denial decision, and counsel's appeal indicate that the spouse naturalized as a United States citizen, there is no evidence of her naturalization contained in the record of proceeding.

[2] The applicant's waiver application, Form I-601, indicates that he is requesting a waiver due to an arrest for domestic violence. However, there is no indication in the record that he was found inadmissible to the United States for the admitted arrest. The only ground of inadmissibility noted in the record is for fraud or willful misrepresentation at entry.

as a nonimmigrant crewman intending to join a ship. However, the applicant did not proceed to join a ship and remained in the United States without Service permission. Five months after entry, he married his spouse.

On motion, counsel states that while the fact that the applicant did not proceed to join his ship after he landed in the United States suggests that he may have had a prior intention to do so when applying for a crewman's visa, it is only a suggestion and not necessarily an absolute truth. Counsel asserts that the applicant is not guilty of misrepresentation because he intended to work as a crewman and that it was only after he had already entered the United States that he decided to "jump ship" - after he had met friends who persuaded him that life as a crewman is very difficult and low-paying and who assured him that they would help him find a place to live, sleep, and eat.

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). The record reflects that at the time of his adjustment of status interview on August 3, 2000, the applicant amended item #10 of his Form I-485 application to respond in the affirmative to the question of whether or not he had "by fraud or willful misrepresentation of a material fact, . . . sought to procure, or procured, a visa, other documentation, entry into the U.S., or any other immigration benefit?" At that time he also signed a statement agreeing to be interviewed without his attorney present and submitted a sworn statement concerning his willful misrepresentation.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
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> * * *
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> (6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-
>
> * * *
>
> (C) MISREPRESENTATION.-
>
> (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.

Section 212(i) of the Act states:

> ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-
>
> (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record reflects that the applicant and his spouse, also a native of the Philippines, have been married for over four years and have a three-year-old daughter. The record contains a statement from the applicant's spouse asserting that she would suffer if the applicant were forced to live in the Philippines because she would lose his company, consortium, affection, and economic and emotional support. She also states that she would suffer if she relocated to

the Philippines with the applicant because she is no longer accustomed to life in that country.

On appeal, counsel submitted a brief stating that common human experience indicates that being forcibly separated from a spouse to raise a child as a single parent constitutes extreme hardship on all parties: the father, the mother, and the child. Counsel also stated that because the applicant's spouse has been in the United States for so many years, has a stable job, and is able to provide a decent life for her family in this country, returning to the Philippines would impose extreme hardship on her.

On motion, counsel states that if the government forces the applicant to live the rest of his life outside of the United States, then it is also forcing his spouse and child either to live permanently deprived of his emotional and financial support or to live a life of poverty with him under deplorable conditions in the Philippines. Counsel concludes on motion that the applicant has really done nothing that is so reprehensible that he and his spouse and daughter should be condemned to a lifetime of separation; that, like so many other human beings, the applicant was simply looking for a better life when he decided not to join his ship after landing in America; and that the applicant and his family beg for the chance of a better life.

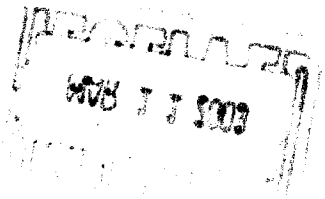
In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The court 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.

There are no laws that require the applicant's spouse to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994). In *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse (the only qualifying relative in this matter) would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Hardship to

the applicant himself, or his child, is not a consideration in section 212(i) proceedings. 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 under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed. The application will be denied.

ORDER: The Associate Commissioner's order dated July 18, 2002 dismissing the appeal is affirmed. The application is denied.