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U.S. Citizenship and Immigration Services

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JUN 29 2004

FILE: [redacted] Office: HONOLULU, HI Date:

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:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed and AAO Order dismissing the appeal will be affirmed.

The applicant is a native and citizen of the Philippines. The record reflects that in the applicant's U.S. citizen husband filed a K1 petition for the applicant. The was denied in due to the applicant's failure to disclose that she was married and had a child in the Philippines.

The record reflects that the applicant annulled her marriage in 2000, and tha subsequently filed a second petition for on behalf of the applicant. The applicant traveled to Hawaii with a K1 in January 2001. She was detained at the airport, however, because she had failed to obtain a waiver of inadmissibility. The applicant's inspection was subsequently deferred to the Honolulu district office. The record reflects that the applicant was released from detention, and that the district office extended the applicant's parole several times through August 2002, so that she could attempt to remedy her immigration situation. The record reflects that the applican in Hawaii on and that on they had a child together. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband and child.

The district director concluded that the applicant failed to establish extreme hardship to a qualifying relative. The application was denied accordingly.

On appeal, counsel asserted that and the applicant's U.S. citizen child would suffer extreme emotional and financial hardship if the applicant's waiver of inadmissibility were not granted. Counsel asserted that if the applicant were removed from the United States would be forced to choose between living in the U.S. without his wife or relocating to the Philippines to be with his wife and child. Counsel asserted further that elderly mother depends on him to care for her and that he would lose long-term employment benefits if he relocated to the Philippines. Counsel also asserted tha would likely face difficulty finding work in the Philippines.

The AAO found that the applicant's U.S. citizen child was not a qualifying relative for section 212(i) purposes, and that hardship to the applicant's child would therefore not be considered. The AAO additionally found that hardship to the applicant's spouse would be accorded diminished weight becaus was aware of the applicant's inadmissibility status prior to his marriage to her. The AAO found further that the psychiatric and dependent parent evidence submitted on appeal had no probative value, and that the remaining evidence failed to establish that would suffer extreme hardship if the applicant were removed from the United States.

In the present motion to reopen and reconsider, counsel asserts that new evidence from psychiatrist establishes that will suffer extreme hardship if his wife is removed from the United States. Counsel additionally reasserts the claim tha would suffer extreme hardship if he remained in the U.S. without his wife and child, and that he would suffer extreme hardship because his elderly mother depends on him for physical, medical and psychological support. Counsel asserts further that legal precedent decisions demonstrate that spouses experiencing a deprivation of their livelihood and an uprooting from their community, as well as spouses suffering psychological conditions as a result of separation from family have been found to suffer extreme hardship. Counsel asserts that the suffering experienced by should be found to be extreme hardship accordingly.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

. . . .

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that the new evidence submitted on motion does not establish extreme hardship t The AAO additionally finds that counsel failed to demonstrate on motion that the previous AAO decision was based on an incorrect application of law or Service policy.

The previous AAO decision made clear that it did not find the psychiatric evaluation evidence fo to have probative value by stating:

> [T]he psychiatrist letter written on s not found to be probative of emotional hardship t he letter is general and vague and it fails to provide information on how medical conclusions are reached, or the basis of the doctor's expertise and opinion.

The previous AAO decision found further that the letter pertaining to medical condition and her need for daily care was vague and lacked probative value as to the level of her dependence on

The new etter from psychiatrist, submitted on motion states simply:

> My clinical opinion has become more reinforced with my continued sessions with If ife were to be forced to leave the country, it would cause extreme hardship on him. Such hardship would be exhibited by becoming emotionally distraught and ill, and occupationally disabled.

The AAO notes that neither the new letter nor counsel address the probative value concerns set forth in the AAO's previous decision. Moreover, the AAO finds that the new letter is general and vague, and that it fails to provide information regarding the frequency and type of sessions held with as well as formal diagnosis information, or information on how medical conclusions were reached. The AAO therefore finds that the psychiatrist letter lacks probative value as well. The AAO notes further that, although counsel reasserts on motion that on him for medical, physical and emotional support, the record contains no new evidence to corroborate these assertions, and the probative value concerns set forth in the previous AAO decision were not addressed on motion.

The AAO additionally notes its previous finding that any hardship suffered by the applicant's spouse in the present case is accorded diminished weight based on knowledge of his wife's inadmissibility status. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999). *See also*

Because the applicant failed to establish that he would suffer new hardship, and because the applicant failed to establish that the previous AAO decision was based on an incorrect application of law or Service policy, the motion will be dismissed.

ORDER: The motion is dismissed and the order of dismissing the appeal is affirmed.