



U.S. Citizenship
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Services

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FILE:  Office: LOS ANGELES, CA Date: JAN 31 2005

IN RE: Applicant: 

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:

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 Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States (U.S.) 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 U.S. citizen. She 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 her husband.

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

Counsel asserts, on appeal, that the interim district director failed to thoroughly analyze the evidence and misapplied precedent law on extreme hardship in the applicant's case. Counsel asserts that the applicant's husband [REDACTED] would suffer emotional hardship if he moved to the Philippines with the applicant because he would be separated from his U.S. citizen daughter and granddaughter. Counsel asserts further that [REDACTED] is over seventy-eight years old and suffers from numerous medical ailments, which require medical monitoring and treatment. Counsel asserts that Mr. [REDACTED] does not work and that he does not have private medical insurance. Rather, [REDACTED] obtains medical services through Medicaid and Medicare benefits that are not transferable to the Philippines. Counsel additionally asserts that a 2003, U.S. Department of State travel advisory establishes that it is dangerous for U.S. citizens to be in the Philippines.

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.

Section 212(i) of the Act provides that:

- (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 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.

Counsel asserts that due to their different purposes and scope, the extreme hardship standards set forth in past suspension of deportation and section 212(h), 8 U.S.C. § 1182(h) legal cases, should not be applied to immigration cases involving section 212(i) of the Act because the inadmissibility bar under section 212(a)(6)(C) of the Act is less serious than the criminal or deportation based grounds addressed in suspension of deportation or section 212(h) proceedings. Counsel asserts that the standard for extreme hardship under section 212(i) of the Act should thus be construed more broadly.

The Board of Immigration Appeals (Board) stated in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 563-565 (BIA 1999) that:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board then outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen-family ties to 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 to 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.

See *Matter of Cervantes-Gonzalez*, *supra*, at 565-566. (Citations omitted).

In the present matter, the record reflects that [REDACTED] is an eighty-year old U.S. citizen who was born in the Philippines on November 3, 1924, and who immigrated to the U.S. in July 1981, when he was fifty-seven years old. [REDACTED] became a naturalized U.S. citizen in July 1987, when he was sixty-two years old, and he married the applicant on November 20, 1998.

The AAO notes that the record contains no evidence to establish the existence of [REDACTED] U.S. citizen daughter or grandchild, or to establish that [REDACTED] has a close relationship with them such that he would suffer emotional hardship if he were separated from them.

The AAO additionally notes that the U.S. Department of State, U.S. citizen travel advisory submitted by counsel is general in nature, and does not establish that Mr. Baldemor, a Philippine native, would face danger if he returned to the Philippines.

The record contains the following evidence pertaining to Mr. [REDACTED] medical condition and treatment, as well as his medical insurance:

A letter from [REDACTED] Natividad, M.D., dated April 4, 2001, stating generally that Mr. [REDACTED] patient with "Malignant Hypertension, Rheumatoid Arthritis, Chronic cough due to chronic bronchitis, Angina Pectoris and Coronary Artery Disease." The letter states that [REDACTED] is presently on medication. The letter states further that [REDACTED] "has recurrent uncontrolled high blood pressure and chest pain", and that he has "episodes of sudden dizziness and almost loss of consciousness." Dr. [REDACTED] concludes that [REDACTED] should not be left alone and is in need of constant supervision.

A second letter from Dr. [REDACTED], M.D., dated April 11, 2003, stating generally that [REDACTED] is a patient due to "hypertensive heart disease, atherosclerotic heart disease, chronic obstructive pulmonary disease, possible coronary artery disease, and degenerative osteoarthritis." The letter states that [REDACTED] is on medication, and that he is unable to perform his routine activities of daily living without assistance due to his heart and lung condition. The letter states further that [REDACTED] has seen other specialists recently because of his worsening condition. Dr. [REDACTED] concludes that [REDACTED] condition is stable at present but needs to be constantly followed up on and monitored.

A letter from Dr. [REDACTED], M.D., dated April 24, 2003, stating that [REDACTED] has degenerative arthritis, hypertension, and glaucoma, and that he was advised to continue the following medications, "Celebrex 200 mg. BID, Tyleno ES 500 mg Prn, Norvasc 5 mg BID, Glucosamine Chondroitin 500 mg QD, Azopt oph.sol., Occupress oph.sol. and Xalatan 2.5 mg oph sol."

Pharmacy receipts reflecting that [REDACTED] filled prescriptions for four medications from January through April 2001 (Norvasc 5 mg, Cephalixin, Promethazine/Codeine, Celebrex). The receipts additionally reflect that [REDACTED] used a State of California Benefits Identification Card to pay for his prescriptions.¹

March 1999, Form I-864, Sworn Affidavit of Support by [REDACTED] reflecting that he did not earn enough money to meet poverty guidelines.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) (citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). U.S. court decisions have also repeatedly held, however, 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). *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS, supra*, held further 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 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 AAO finds that the record contains no evidence to substantiate the claim that Mr. [REDACTED] has a U.S. citizen daughter or granddaughter in the United States, or that he would otherwise suffer emotional hardship

¹ The AAO notes that State of California Benefits Identification Cards are issued by MediCal. *See generally*, <http://www.medi-cal.ca.gov>.

if he moved to the Philippines with the applicant. The record additionally fails to establish that Mr. [REDACTED] a Philippine native, would face danger if he returned to the Philippines.

Nevertheless, the AAO finds that the evidence in the record does establish that, due to his age, Mr. [REDACTED] would be unable to work or earn an income if he returned to the Philippines with the applicant. The AAO finds further that the medical evidence in the record sufficiently establishes that Mr. [REDACTED] requires medication and follow-up medical visits for several medical conditions, and although the evidence does not establish that adequate medical facilities and medications are unavailable in the Philippines, the evidence does establish that the California medical insurance that Mr. [REDACTED] presently relies upon to pay for his medical expenses would not be available if he moved to the Philippines with the applicant.

The AAO therefore finds that the applicant has established that Mr. [REDACTED] would suffer extreme hardship if he returned to the Philippines with the applicant. The applicant also established that, due to his advanced age and his medical condition, Mr. [REDACTED] would suffer hardship beyond that normally suffered upon removal of a family member if his wife were required to go to the Philippines without him.

The AAO finds further that in the present matter, the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the AAO must, "[b]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996). The AAO notes that the alien bears the burden of proving eligibility in terms of equities in the United States that are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's use of a false ID to procure a nonimmigrant visa and admission into the United States in 1990, and her lengthy unlawful presence in the United States. The favorable factors in the present case are the extreme hardship to [REDACTED] if the applicant is required to return to the Philippines, and the lack of other immigration violations or of a criminal record in this country.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.