



U.S. Citizenship
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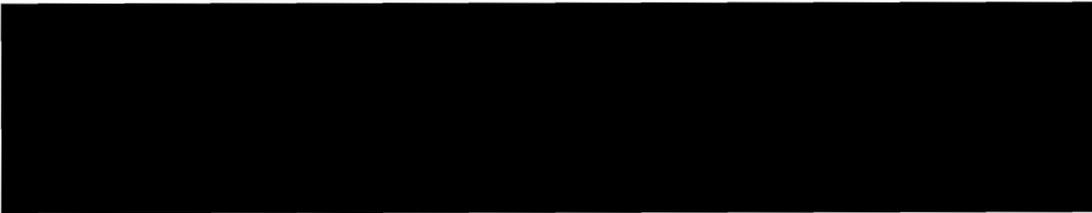
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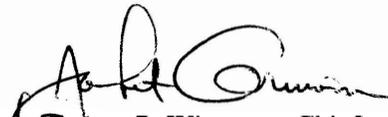
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Tampa, Florida, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and she is seeking 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.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 5, 2007.

On appeal, counsel asserts that the officer-in-charge abused her discretion by not considering the relevant hardship factors, by failing to issue a well-reasoned decision, by relying on a previous I-601 denial in basically giving a summary dismissal of the new I-601 application, and by drawing conclusions that were based upon misinterpretations of the law and facts. *Form I-290B*, dated January 19, 2007.

The record includes, but is not limited to, counsel's brief, medical letters/records for the applicant's spouse, letters of support for the applicant, the applicant's spouse's statement, the applicant's statement and information on the Philippines.

The record reflects that the applicant applied for admission to the United States with a fraudulent passport on April 8, 1992 and she misrepresented herself under oath to an immigration officer. The applicant was placed in exclusion proceedings, ordered excluded *in absentia* on July 7, 1992 and detained on December 6, 2006. As a result of her prior misrepresentations, the applicant is inadmissible to the United States.

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 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 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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include 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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in the Philippines. Counsel maintains that the applicant's spouse has resided in the United States his entire life (for nearly 60 years), he has been in the plumbing and mechanical engineering industry for the past 30 years, and he has a home in the United States. *Brief in Support of Appeal*, at 6, dated January 19, 2007. Counsel states that the applicant's spouse has two U.S. citizen stepchildren, three U.S. citizen sisters, and several cousins and aunts who reside in the United States. *Id.* Counsel asserts that the applicant's spouse has no family ties outside of the United States. *Id.* The applicant's spouse states that he attends religious services at the Calvary Baptist church, he is a member of a plumbing engineering society, he does not speak or understand the language spoken in the Philippines, and he would be unfamiliar with the culture. *Applicant's Spouse's Statement*, at 3, 8-9, dated December 7, 2006.

In regard to country conditions, the Department of State has detailed security concerns and has warned against all but essential travel throughout the country. *Department of State Consular Information Sheet for the Philippines*, at 2, dated June 19, 2006. The AAO notes, however, that there is no indication as to which area of the country the applicant's spouse would reside and whether it is a relatively safe part of the country.

The record reflects that the applicant's spouse has been under the care of a doctor for depression since December 6, 2002 and he takes regular medication for his depression. *Letter from [REDACTED] M.D.*, dated December 7, 2006. The record reflects that the applicant's spouse attends therapy with a licensed social worker. *Letter from [REDACTED] CAP*, undated. The applicant's spouse states that he would lose his medical coverage if he moved to the Philippines. *Applicant's Spouse's Statement*, at 13. The record includes a copy of the applicant's spouse's insurance card. In March 2006, the applicant's spouse underwent arthroscopic knee surgery. *Applicant's Spouse's Medical Records*. Counsel states that the applicant's spouse is heavily dependent on his health insurance for his physical health, and he will not have peace of mind

regarding his mental health due to dependence on his insurance for checkups and medication. *Brief in Support of Appeal*, at 7.

Considering the applicant's spouse's strong ties to the United States, his lack of ties to the Philippines, his medical issues and the general country conditions, the AAO finds that the applicant's spouse would face extreme hardship if he relocated to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse's social worker states that his status has deteriorated since the applicant was detained, he has returned to alcohol as a tranquilizer and he is missing time from work. *Treatment Summary from 12/11/06 to 01/11/07 by [REDACTED] V, CAP*, undated. The record reflects that the applicant's spouse has a lengthy history of depression which includes at least one prior suicide act. *Letter from [REDACTED] M.D., dated July 15, 2004*. Based on the applicant's medical history, it is plausible that his medical problems will become exacerbated if he resides in the United States without the applicant. Counsel states that the applicant's spouse depends on the emotional support from his wife of nine years. *Brief in Support of Appeal*, at 7. In addition, the applicant's spouse states that he treats his stepchildren as his own and the record indicates that he would have to deal with their emotional issues as a result of their mother's absence. *Applicant's Spouse's Statement*, at 3-8.

The applicant's spouse lists his various financial obligations and states that it will be financially impossible for him to maintain two households. *Applicant's Spouse's Statement*, at 10. The applicant received nonemployee compensation of \$25,371 and wages of \$37,544 in 2005. *Applicant's 2005 Form 1099 and 2005 Form W-2*. The applicant's spouse states that he is making \$46,000 per year. *Form I-864*, at 2, dated April 4, 2006. Without the applicant's financial contribution, the record indicates that the applicant's spouse would encounter financial hardship.

Considering the emotional and financial issues, the AAO finds that separation from the applicant would cause extreme hardship to the applicant's spouse.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to

the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[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." *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant's misrepresentations, her failure to appear for her exclusion hearing, her failure to depart the United States, and her unauthorized period of stay.

The favorable factors include the applicant's U.S. citizen spouse and two children, her lack of a criminal record, extreme hardship to her spouse, her strong ties to the community and the numerous letters related to her good character.

The court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. This diminished weight will be considered in evaluating the applicant's favorable factors. For instance, the applicant in the present case married her U.S. citizen spouse on September 24, 1997, more than five years after the applicant was ordered excluded. In *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the court held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. Although he should reasonably have been aware of the applicant's immigration violations and the possibility of her being inadmissible at the time of their marriage, the record is not clear as to whether the applicant's spouse had this type of knowledge.

In evaluating the favorable factors in relation to the adverse factors, paramount weight will be given to the extreme hardship due to the nature of the facts which lead to the finding of extreme hardship.

The AAO finds that the misrepresentations and immigration violations of the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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.