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MAR 20 2007

FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE Date:

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

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 District Director, Los Angeles, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of the Philippines, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 and reside with his United States citizen wife and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's wife, a United States citizen, would suffer extreme hardship if the applicant were required to return to the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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 of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. 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).

Thus, the first issue to be addressed is whether the applicant's return to the Philippines would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of 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. 22 I&N Dec. at 565-566.

Regarding the applicant's grounds of inadmissibility, the record reflects that he entered the United States on September 20, 1989, using a passport issued to another person. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. Accordingly, the applicant is 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 attempting to enter the United States by making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on or around July 26, 2000, and the instant Form I-601 was filed simultaneously. He does not dispute his inadmissibility.

On appeal, counsel contends that the applicant qualifies for a waiver of inadmissibility. Counsel contends that the applicant's forced return to the Philippines would inflict extreme hardship on his wife. Counsel contends that the applicant's wife would experience extreme hardship if the applicant were returned to the Philippines, regardless of whether she accompanied him or remained in California.

The record contains documentation regarding the applicant's wife's ongoing medical condition. According to an evaluation conducted by [REDACTED], a clinical and forensic psychologist, the applicant's wife suffers from bipolar disorder II, insomnia, and high blood pressure. Additionally, [REDACTED] stated that the applicant's wife is under his care for hypertension, hypothyroidism, and gastroesophageal reflux disease. The record also contains documentary evidence regarding the various medications she has taken to manage these disorders. In the conclusion of her psychological evaluation, [REDACTED] stated that if the applicant's husband is returned to the Philippines, she would likely lapse into a major depressive episode, and that a suicide attempt would be possible.

[REDACTED] made the following findings:

[The applicant's wife's] elderly mother,¹ a legal permanent resident, has uterine cancer.² [The applicant's wife's] mother, [mother's name withheld], lives with her and her husband. Together, coordinate the daily care for her. [The applicant's wife's mother] is particularly needy because she cannot walk outside the home, she is dependent on a wheelchair. [The applicant's wife] also is the primary transportation to numerous medical

¹ The applicant's wife's mother was born on May 4, 1920.

² The record establishes that the applicant's wife's mother also suffers from Parkinson's disease and Alzheimer's disease. She takes various medications to manage these conditions, and the applicant and his wife drive her to her many doctor's visits. She was previously being administered chemotherapy for her uterine cancer, but that course of treatment had to be stopped when her kidneys failed.

doctor appointments. [The applicant's wife] is dependent on her husband to help her manager her mother's constant care. While [the applicant's wife] is at work (graveyard shift), her husband feeds and watches [sic] over his mother-in-law. Without [the applicant], she would not be able to manage her work and care for her mother. . . .

[The applicant's wife] is very active in her adult children's lives. She is especially concerned about her grandchildren's well-being. After working the grave[yard] shift, she daily drives up to five grandchildren to school to ensure they will be safe. [The applicant's wife] has also become very involved in her adult son's life because his wife was diagnosed with uterine cancer. . . .

[The applicant's wife] appears to have severe psychological problems related to depression and mania. [The applicant's wife's] clinical interview revealed a lifestyle that is packed with activities that most individuals in their 50's would not be able to manage. . . .

[The applicant's wife] has bouts of tremendous energy, as identified by the [personality inventory]. Her score on the [personality inventory] mania scale indicates along with the energy comes irritability, problematic relationships, poor judgments, and impulsivity. Her impulsive tendency may have led her to divorce her husband in the early 1990s; she remarried him several years later. Fortunately, she has a calm, hardworking husband who helps her manage her life in a more constructive manner. However, if he is deported, the structure and support he provides will be gone. It is possible she will have further personality deterioration and become suicidal. Often, individuals who have manic and depressive symptoms will experience suicidal tendencies with a major loss in their life.

The record also contains affidavits from the applicant's wife. In her first affidavit, dated November 16, 2001, the applicant's wife discusses the extreme hardship she would face if the applicant were to return to the Philippines, regardless of whether she would return with him or remain in California. If she were to remain in the United States, she would lose the support, both emotionally and financially, that he provides as she cares for her mother and manages her own medical conditions.

She states that it would be very difficult for her to return to the Philippines, as she would have to either bring her mother with her or leave her in the United States. She noted the decreased quality of medical care in the Philippines, relative to the United States, that she and her mother would likely receive. She contends that it would be very difficult for her to find a job; she would have to "start over."

The applicant's wife's second affidavit, dated December 7, 2004 reiterates the assertions of the first affidavit and offers additional information. She notes that her mother cannot be trusted to stay alone; for example, she will sometimes turn on the gas oven or faucet and then forget to turn it off. She explains that her husband watches their grandchildren while their parents work and, as such, are "totally devoted" to him. She states the following:

I cannot physically care for my mother during the day, watch her and the children in the evening, work a nine (9) hour graveyard shift, take care of my own health, pay the

mortgage[,] and still manage to get enough sleep to function . . . I cannot begin to express how difficult my life would be without my husband here to help me keep my mother alive, keep a roof over our head and keep life together. . . .

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The AAO finds that the applicant’s wife would face extreme hardship if the applicant is required to return to the Philippines. If she remains in the United States without the applicant, she is likely to face setbacks in her medical condition, as attested to by the psychologist treating the applicant’s wife. She would also face extreme hardship in managing her daily affairs, as her husband’s presence is necessary in order to maintain her working and care giving schedules. The AAO also finds that he would face extreme hardship if she were to accompany the applicant to the Philippines. Although she was born in the Philippines, the record demonstrates that returning at this point would be quite difficult. Leaving her mother in the United States would likely result in her entering a residential treatment facility, and taking her along to the Philippines would result in a decreased quality of care. Treatment of her own medical conditions would likely suffer, also. She would also leave behind an extended family network in California.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of “extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant’s wife would face if the applicant were to return to the Philippines, regardless of whether she accompanied him or remained in the United States, United States citizen spouse and children, apparent lack of a criminal record, gainful employment, and the passage of eighteen years since the immigration violation. The unfavorable factors in this matter are the applicant’s willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States, and periods of unauthorized presence.

While the AAO does not condone his actions, the AAO finds that the hardship imposed on the applicant’s wife as a result of her inadmissibility outweighs the unfavorable factor in this application. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the

Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.