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**U.S. Citizenship  
and Immigration  
Services**

*H2*

FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date: **MAY 11 2007**

IN RE:

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 in granting the waiver.

*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 November 24, 1993, 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). The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on or around December 2, 2003, and the instant Form I-601 was filed shortly thereafter. 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 behind in California.

The record contains documentation regarding the applicant's wife's ongoing medical conditions. She asserts, and submits evidence to verify, that she suffers from bipolarism, borderline personality disorder, psychotic disorder, severe anemia, and borderline diabetes. She has suffered through drug and alcohol abuse, sexual abuse and exploitation, homelessness, self-mutilation, and several suicide attempts. In his appellate brief, counsel states the following:

[The applicant's wife] has had an extremely unfortunate life well accenting her current dependency on the applicant. Both of her parents were heroin addicts and she was physically and sexually abused throughout her infancy and early childhood. At age five, [she] was removed from her mother's care after her mother attempted to drown her. She was placed in various foster homes and was beaten. . . .

At age fifteen [she] ran away and began living on the streets . . . she began what was to become a lifetime struggle with drugs and alcohol. [The applicant's wife] used heroin, crack, amphetamines, speed, cocaine[,] and numerous other drugs. It was partly due to her drug addiction that [she] was never able to establish a permanent living situation . . . Due to her unstable living situation, and drug addiction, [she] was never able to attend school or hold a steady job. . . .

Thanks to the stable environment provided by [the applicant], [the applicant's wife] has been drug free since their marriage. [She] is no longer on the streets, as she now lives

with [the applicant]. Additionally, since [the applicant] supports her, [she] has been able to focus on raising the couple's child and dealing with her depression. [The applicant's wife] credits the dramatic turnaround in her life almost exclusively to the stability provided by [the applicant] and the couple[']s new baby daughter.

The record contains two affidavits from the applicant's wife. In her first affidavit, dated September 7, 2004, she stated that the applicant provides financial and emotional stability, and that he and the couple's daughter are her reasons for living; that life had been cruel until she met the applicant through a mutual friend (she had suffered many types of abuses while in foster care, which affected her physically, mentally, and emotionally); that she has found a new life with her husband and daughter; and that she cannot raise the couple's daughter without the applicant.

In her second affidavit, dated November 17, 2004, she states the following:

My mother and father were both addicted to drugs and throughout my infancy and early childhood I was sexually and physically abused. . . .

At the age of five my mother attempted to drown me. After this incident I was removed to foster care. . . .

I lived in various foster homes from the age [of] 5 until 15 . . . From age 15 until I met [the applicant], I lived on the streets, with various friends[,] and in homeless shelters. . . .

I have been hospitalized for various mental illnesses. I am currently being treated and taking medication for mental illness. . . .

I have struggled with drug addiction since age 14. . . .

I have attempted suicide several times. I have also engaged in self-mutilation and I suffer from extreme depression. . . .

I have never been able to hold down a steady job. . . .

I met [the applicant] about two years ago. Since then my condition has changed drastically. I have been drug free since our marriage. I have not been living on the streets and engaging in my old behavior since marrying [the applicant]. [The applicant] has provided me with the first stable and safe environment I have ever had in my life. He is the reason I have been able to turn my life around. . . .

I have no family, upon whom I can rely, in this country. I am not in contact with my father. My mother is addicted to drugs and is not an active part of my life. I have a brother but I have never been able to live with him because he also has a drug problem. . . .

I am afraid that if [the applicant] leaves the country I will relapse into drug addiction. .

The record also contains a November 1, 2004 report from the County of San Bernardino Department of Behavioral Health, which is currently treating the applicant's wife. She has a monthly meeting with [REDACTED] M.D., for medication support services. Dr. [REDACTED] states the following:

Client is quite unstable at this time, and the stress of losing husband is very likely to precipitate a crisis.

The applicant also submits a November 11, 2004 psychological evaluation from [REDACTED] Ph.D., a psychoanalyst and clinical psychologist in Los Angeles. In his evaluation, [REDACTED] states the following:

[The applicant's wife] is a 25 year old woman with a long history of infantile and childhood trauma owing to drug abusing and mentally ill parents, multiple foster care placements which ushered in further abuse, and then her own drug abuse, severe depression, self-mutilations, suicide attempts, hospitalizations, arrests, and life as a street person exposed to further physical abuse and sexual exploitation. Two years ago, with the help of a friend, [she] entered AA and met and later married [the applicant]. Today [the applicant's wife] is drug free, relatively free from disabling depressions, and is making a home with [the applicant] and their four month old daughter. Moreover, this woman, who likely was headed for an early death, now has hope for the future, her own and her infant daughter. I have no doubt that [the applicant's] love and support is a vital aspect of [her] recovery, which is nothing short of remarkable. It is my considered opinion that with the love and support of [the applicant], [she] may once again fall into a deep, and perhaps crippling depression, with the life threatening complications of drug abuse and related ills that are all too familiar to her.

The record also contains evidence that documents the various medications the applicant's wife is currently taking, as well as those that she has taken in the past. It also contains extensive evidence regarding the past difficulties she has faced with drug addiction, mental illness, and homelessness, and evidence that her relationship with the applicant has provided the stability necessary for the effective management of these conditions.

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 (9<sup>th</sup> 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 would face setbacks in his medical treatment, as attested by the doctors treating the applicant's wife, as well as the psychologist who evaluated her. Also, she is the sole childcare provider to the couple's daughter, and she has no family members who could assist her in raising her daughter. The AAO also finds that she would face extreme hardship if she were to accompany the applicant to the Philippines. A citizen of the United States by birth, the applicant's wife has never visited the Philippines, nor does she speak that country's language. She would not have access to the mental health support system that she currently relies on, including her physicians and friends at Alcoholics Anonymous.

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 child, apparent lack of a criminal record, gainful employment, and the passage of fourteen 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, periods of unauthorized employment, 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 his 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.