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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: SACRAMENTO, CA

Date:

MAY 29 2008

IN RE:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Sacramento, 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 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 16, 2007.¹

On appeal, counsel states that the field office director disregarded evidence presented by the applicant and his spouse which clearly establish that his spouse would suffer extreme hardship if he were forced to leave the country. *Form I-290B*, received December 19, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, physicians' statements for the applicant's spouse, country conditions information on the Philippines, the applicant's spouse's medical records, a psychological evaluation for the applicant's spouse and the applicant's financial information. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on March 30, 1999, the applicant presented a fraudulent passport and transit without visa (TWOV) documentation for entry into the United States before boarding a plane from San Francisco to Canada. He subsequently entered the United States without inspection. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C) of the Act .

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

¹ The AAO notes that the applicant previously filed another Form I-601 based on hardship to this spouse, the application was denied on May 6, 2004 and his appeal to the AAO was dismissed on July 26, 2006.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to an applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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 U.S. 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Philippines or in the event that she resides in the United States, as she is not required to reside outside 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 his spouse in the event that she resides in the Philippines. The field office director found that the applicant established that his spouse will suffer extreme hardship as a result of relocating to the Philippines. *Decision of the Field Office Director*, at 5. In addition, the AAO previously held that the applicant had established this prong of the analysis. *AAO Decision*, dated July 26, 2006. Based on the record, the applicant has established that his spouse will suffer extreme hardship as a result of relocating to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse has undergone surgery for a labial mass/abscess on her right side, she has been diagnosed with Type-II diabetes and asthma, she had surgery due to a painful inflammatory mass in her left neck and she has had a CT scan due to headaches and dizziness. *Brief in Support of Appeal*, at 4, dated December 12, 2007. The applicant's spouse states that following her most recent surgery she is unable to drive or perform heavy household chores, she requires her spouse to assist her with daily activities and wound care, she relies on her spouse for emotional and physical support, her spouse brought her to the hospital when she had pain in her inflamed neck, upon learning that the applicant may be removed she experienced headaches and dizziness and her spouse reminds her to take her medications. *Applicant's Spouse's Statement*, at 1-3, dated August 22, 2007. The record includes a lengthy list of the applicant's spouse's medications from her pharmacist. The applicant's spouse's physician states that the applicant's spouse has undergone emergency surgery, she needs her husband to help with her medical needs and she has no other family members who can assist her with these duties. *Letter from* [REDACTED], dated July 25, 2007. Another of the applicant's spouse's physicians states that the applicant's

spouse is currently taking medication for Type-II diabetes. *Letter from* [REDACTED], dated May 25, 2005.

The applicant's spouse states that she has been trying to conceive with the applicant since they were married, there is pressure on her because of her age, they were referred to see an infertility specialist, the emotional and financial strain on them to conceive has been enormous, and the need for the applicant to support her through these trying times has increased. *Applicant's Spouse's Statement*, at 2. The applicant's spouse's nurse practitioner states that the applicant's spouse has unsuccessfully tried to conceive for two years and she has **been referred to an infertility specialist.** *Letter from* [REDACTED] *FNP*, dated July 5, 2007. The applicant's spouse states that she entered into a failed marriage before, she knows how painful it is to lose a loved one and she was devastated from the breakup with her first husband. *Applicant's Spouse's Statement*, at 2-3. The applicant's spouse's psychological evaluation reflects that the applicant's spouse's ex-spouse had extramarital relationships, took cocaine and was physically abusive. *Psychological Evaluation*, at 2, dated April 12, 2004. Counsel states that with the applicant's spouse's past experiences and previous major depressive episode, she is more vulnerable to suffer another major episode of depression which could lead to a serious mental disorder. *Brief in Support of Appeal*, at 8. The psychological evaluation reflects that the applicant's spouse has described symptoms of major depressive disorder including depressed mood, increased sleep, decreased energy levels, diminished concentration and that she is more vulnerable to depression due to her prior episode of dysthymic disorder. *Psychological Evaluation*, at 4.

Counsel states that the applicant's spouse's monthly net pay is \$1,720, the applicant's monthly net pay is around \$2,000, their monthly expenses are around \$3,295.58 and the applicant's spouse will not be able to meet her monthly expenses without the applicant. *Id.* at 5-6. The applicant's spouse states that she would not be able to pay all of the bills, she may file for bankruptcy and her house would be placed in foreclosure. *Applicant's Spouse's Statement*, at 4.

Although none of the hardships documented by the applicant individually demonstrate that his spouse would experience extreme hardship if he were removed from the United States, the combination of the hardships that the applicant's spouse would suffer does distinguish her situation from other individuals separated from their spouses as a result of removal. Accordingly, the AAO finds the applicant to have established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

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-Morales, 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 misrepresentation, entry without inspection, unauthorized presence and employment, and arrest for presenting a false identification to a sheriff.

The favorable factors include the presence of the U.S. citizen spouse, an approved Form I-130, the lack of a criminal record (other than his September 15, 2001 arrest), extreme hardship to his spouse, payment of taxes and property ownership.

The AAO finds that the applicant's violations 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.