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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H5

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 0 6 2010

IN RE: Applicant: [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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record establishes that the applicant, a native and citizen of the Philippines, procured entry to the United States in June 1990 by presenting a fraudulent passport and U.S. nonimmigrant visa. The applicant is thus 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 entry to the United States by fraud or willful misrepresentation. The applicant is applying for 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 U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative under section 212(h) of the Act[1] and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated July 23, 2007.

In support of the appeal, counsel for the applicant submits a brief, dated August 14, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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 immigrant 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

[1] The director, in her decision, noted that the applicant was eligible for a waiver under section 212(h) of the Act. Section 212(h) of the Act pertains to waivers for aliens inadmissible to the United States due to having been convicted of a crime involving moral turpitude under section 212(a)(2) of the Act. The record does not support a finding that the applicant has been convicted of a crime involving moral turpitude. Instead, the record establishes that the applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, as outlined above. A waiver under section 212(i) of the Act is necessary.

> hardship to the citizen or lawfully resident spouse or parent of such an alien...

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their lawful permanent resident children cannot be considered, except as it may affect the applicant's spouse.

This matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> 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.

The applicant's U.S. citizen spouse asserts that he will suffer extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship he has with his wife; he notes that they have been married for over 30 years. He further notes that he suffers from numerous medical conditions, including undergoing a triple bypass in 1999, diabetes, and plantar fasciitis. Due to said medical conditions, he asserts that he needs his spouse to help care for him on a

daily basis. He contends that his spouse devotes her time and energy in taking care of him, preparing special meals for him in accordance with his strict diet, driving him to doctor's appointments, giving him daily medications for his heart, blood sugar and heel problems, checking his sugar level regularly, performing exercises to stretch his lower leg muscles, joining him in his daily walk exercise, and most importantly, giving him the love, care and attention he needs. In addition to taking care of him, the applicant's spouse notes that the applicant does most of the marketing, cooking, laundering and house-cleaning and provides for the family financially during times he is not able to go to work because of his illnesses. *Declaration of* [redacted] dated October 18, 2006.

In support, counsel has submitted medical documentation for the applicant's spouse, confirming his numerous medical conditions and the medications prescribed to him. *Report from* [redacted]. In addition, documentation has been provided establishing the critical financial contributions made by the applicant to the household, and further confirming that without her income, the applicant's spouse may suffer financial hardship. *See Forms W-2, Wage and Tax Statements, for 2005 for* [redacted]. Finally, letters have been provided from the applicant's son and daughter-in-law, confirming the applicant's spouse's medical condition and further supporting the assertion that he needs his spouse to help care for him. *Letter from* [redacted] dated August 14, 2007 and *Letter from* [redacted] dated August 14, 2007.

The record establishes that the applicant and his spouse have been married since 1978. The applicant's spouse is over sixty years old. The record further establishes the applicant's spouse's medical conditions and the need for his spouse to assist him, emotionally, physically and financially. Moreover, as the applicant's spouse asserts, and counsel documents, it would be difficult for the applicant to find gainful employment in Philippines, thereby causing financial hardship to her spouse in the United States. Thus, based on a thorough review of the record, the AAO concludes that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship. The applicant's spouse needs the support that the applicant provides on a day to day basis. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. Based on the applicant's spouse's documented medical conditions, the gravity and unpredictability of the symptoms associated with his conditions, the short and long-term ramifications for those afflicted, the need to be treated, in an affordable and effective[2] fashion by medical professionals familiar with his medical

[2] As noted by the U.S. Department of State, in pertinent part:

> Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. Medical care is limited in rural and more remote areas.

conditions, the fact that the applicant's spouse has not resided in the Philippines since 1982 and the children who remained in the Philippines are dependent on the applicant and her spouse for financial support due to the substandard economy in the Philippines[3], and the applicant's spouse's need to remain close to his lawful permanent resident children, U.S. citizen grandchildren, community and employment, the AAO concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Philippines to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Philippines to reside with the applicant. 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. 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 . . . 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

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> Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full.

See Country Specific Information-Philippines, U.S. Department of State, dated November 6, 2009.

[3] As noted by the U.S. Department of State,

> The portion of the population living below the national poverty line increased from 30% to 33% between 2003 and 2006, equivalent to an additional 3.8 million poor Filipinos. Slower economic growth here and abroad, a soft domestic labor market, and uncertainties over overseas employment opportunities threaten to push more Filipinos into poverty.

Background Note: Philippines, U.S. Department of State, dated October 2009.

> 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse, lawful permanent resident children and U.S. citizen grandchildren would face if the applicant were to reside in the Philippines due to her inadmissibility, community ties, support letters from friends and family, gainful employment in the United States as a Certified Nursing Assistant, payment of taxes, the apparent lack of a criminal record and the passage of almost twenty years since the applicant's fraud or willful misrepresentation when obtaining entry to the United States. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation to procure entry to the United States and periods of unauthorized presence and employment in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, 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. The district director shall continue to process the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, on its merits.