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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: NOV 01 2011 Office: LOS ANGELES FILE: [redacted]

IN RE: Applicant: LUGINA M. MENDOZA

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines who was found to be inadmissible 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 having procured entry to the United States through fraud or willful misrepresentation of a material fact. The applicant seeks 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 with her U.S. Citizen spouse

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 Form I-601 accordingly. *Decision of the Field Office Director,* dated September 4, 2008.

On appeal, counsel contends that the applicant entered the United States on October 22, 1997 through the border with Mexico without being inspected by a U.S. immigration officer. *See Brief in Support of Appeal.* Counsel further contends that U.S. Citizenship and Immigration Services (USCIS) erred in failing to cumulatively consider all of the factors relevant to determining extreme hardship, in particular serious medical conditions of the applicant's spouse and potential financial hardships. *Brief in Support of Appeal.*

The Field Office Director determined that the applicant had not provided sufficient evidence to support her claim that she had entered the United States without inspection in 1997 and concluded that she entered with a fraudulent visa. The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not procure entry to the United States by fraud or willful misrepresentation and the applicant therefore requires a waiver of inadmissibility section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a

qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for

28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse contends that he will experience emotional and physical hardship were he to remain in the United States while his wife relocates abroad due to his inadmissibility. In a declaration, the applicant's spouse contends that he cannot imagine life in the United States without his wife. In addition, the applicant's spouse explains that he suffers from numerous medical conditions, including severe tendinosis, a large irregular tear involving over 50% of the tendon diameter distally, diabetes, high blood pressure and cholesterol and he thus needs to wife to attend to his needs and make sure that he gets the attention and care he requires. *Letter from* [redacted] dated July 30, 2008. Finally, counsel references the substandard economy in the Philippines and asserts that the applicant's spouse's income will not suffice to support two households, one in the Philippines and one in the United States. *Supra* at 8.

In support of the emotional hardship referenced, a letter has been provided from [redacted]. [redacted] confirms that the applicant's spouse is suffering from Chronic Major Depression and Generalized Anxiety Disorder as a result of his wife's inadmissibility. [redacted] notes that the applicant's spouse will start treatment and therapy with him on a regular basis. *Letter from* [redacted], *Comprehensive Psychiatric Services.* In addition, evidence of an antidepressant prescribed to the applicant's spouse has been submitted by counsel. A letter has also been provided from the applicant's spouse's treating physician, [redacted], confirming that the applicant's spouse has been under his care since 2001 and is under treatment for diabetes mellitus, hypertension and hypercholesterolemia, is taking medications for these conditions, and needs to be seen every 3 months and when medical need arises. *Letter from* [redacted] dated July 11, 2008. Moreover, evidence of the applicant's spouse's severe tendinosis and large irregular tear involving over 50% of the tendon diameter distally has been provided. *Letter from* [redacted], dated August 2, 2006. Further, the record establishes that the applicant and her spouse are already finding it difficult to make ends meet and without the applicant's income as a Certified Nursing Assistant, an already difficult financial situation will deteriorate. *Letter from* [redacted] *of Staff Development,* [redacted] dated July 10, 2008 and *Monthly Income and Expenses.* Finally, documentation regarding the substandard economy in the Philippines has been submitted. [1]

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

> The portion of the population living below the national poverty line increased from 24.9% to 26.5% between 2003 and 2009, equivalent to an additional 3.3 million poor Filipinos.

Background Note-Philippines, U.S. Department of State, dated June 3, 2011.

Based on a totality of the circumstances, 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 financial support that the applicant provides as well as day to day assistance due to his medical conditions. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

With respect to relocating abroad to reside with the applicant due to her inadmissibility, the applicant's U.S. citizen spouse asserts that he would suffer emotional hardship due to long-term separation from his relatives, his church and his community. In addition, the applicant's spouse contends that he is gainfully employed and earns over $40,000 per year, and were he to relocate abroad, he would not be able to obtain gainful employment in his area of expertise due to his age and the substandard economy. Finally, he contends that he would suffer as he would not be able to obtain affordable and effective medical treatment for his numerous medical conditions. *Supra* at 2-3.

The record establishes that the applicant's spouse became a lawful permanent resident of the United States over 22 years ago. He has been gainfully employed, since January 2007, as a Manufacturing Technician II, earning $17.07 per hour. *Letter from* [redacted], *Benefits Coordinator/HR Specialist,* [redacted], dated June 25, 2008. Based on the applicant's spouse's extensive and long-term ties to the United States, gainful employment, and the problematic country conditions in the Philippines, including substandard medical care[2] and high poverty and unemployment, 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. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of

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[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.
>
> 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 May 11, 2010.

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 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 hardships the applicant's U.S. citizen spouse would face if the applicant were to relocate to the Philippines due to her inadmissibility, community ties, gainful employment, church membership, payment of taxes, the apparent lack of a criminal record, and the passage of more than thirteen years since the applicant's fraud or willful misrepresentation when procuring entry to the United States. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation when procuring entry to the United States and periods of unauthorized presence 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 field office director shall continue to process the Form I-485 application accordingly.