U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

H5

Date: FEB 21 2012 Office: LOS ANGELES FILE: [redacted]

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:

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 matter will be returned to the field office director for continued processing.

The applicant is a native and citizen of the Philippines who procured entry to the United States in 1998 by presenting a fraudulent passport. She 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. The applicant does not contest this finding of inadmissibility. Rather, she is seeking 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 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 June 3, 2009.

In support of the appeal, counsel for the applicant submits the following: a brief; affidavits from the applicant and her spouse; medical and mental health documentation pertaining to the applicant's spouse; and evidence of the applicant's family ties in the United States, including the presence of her lawful permanent resident mother and her U.S. citizen brother. The entire record was reviewed and considered in rendering this decision.

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

> (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:

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

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 U.S. citizen spouse contends that he will experience emotional and financial hardship were he to remain in the United States while his wife relocates abroad due to her inadmissibility. In a declaration, the applicant's spouse explains that since meeting his wife he has become a better person and he cannot bear living the rest of his life without her by his side. In addition, the applicant's spouse explains that he suffers from numerous medical conditions and he thus needs his wife to remain in the United States as he obtains health insurance coverage as her dependent. Finally, the applicant's spouse notes that he has been disabled since January 2004 and relies on his wife's income to support him. He asserts that his wife pays for the apartment, food, utilities and all other daily expenses and were she to relocate abroad, she will not be able to continue providing financial support to him. *Letter from* [redacted] and *Declaration of* [redacted] dated January 27, 2009.

In support, a letter and medical documentation have been provided establishing the applicant's spouse's numerous medical conditions, including [redacted] outlining the medications prescribed to him to treat his medical conditions and noting the required follow-up treatment plan for the applicant's spouse. *Medical History and Records.* In addition, the record establishes that the applicant's spouse has been disabled since January 2004. *See Form I-864, Affidavit of Support.* Moreover, psychological evaluations have been provided outlining the applicant's spouse's depression and anxiety, confirming that he is taking Prozac for his depression and noting that were his wife to relocate abroad, his depression and anxiety would escalate. *Psychological Evaluations from* [redacted] dated July 21, 2009 and January 13, 2009. Furthermore, documentation establishing the applicant's spouse's medical coverage through his wife's employment has been provided. *See Welcome Benefit Letter,* dated December 26, 2007. In addition, evidence has been provided establishing the applicant's gainful employment in the United States and confirming that she is providing full support to her husband as the sole breadwinner in the family. *See Employment Verification Letter,* dated January 5, 2009, *Form W-2 Wage and Tax Statement for 2007* and *State of California Income Tax Return for 2007.* Finally, documentation regarding the substandard economy in the Philippines has been submitted to support

the applicant's spouse's assertion that his wife will be unable to provide for him while living abroad.[1]

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 relies on the emotional and financial support that the applicant provides as well as day to day assistance due to his medical conditions and disability. 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 explains that he no longer has any ties to the Philippines. He further asserts that he would suffer emotional hardship were he to relocate abroad due to long-term separation from his daughter and his community. In addition, the applicant's spouse contends that as a result of his disability and the substandard economy, he would not be able to maintain his standard of living. Moreover, he contends that he would suffer as he would not be able to obtain affordable and effective medical treatment for his numerous medical conditions with physicians familiar with his conditions and treatment plan. Finally, as an American citizen, the applicant's spouse asserts that he would be in fear for his safety since Americans are often targets for kidnapping. *Supra.*

The record establishes that the applicant's spouse has been residing in the United States for over 24 years. Based on the applicant's spouse's extensive and long-term ties to the United States and the problematic country conditions in the Philippines, including substandard medical care, terrorist activity and crime[2] and high poverty and unemployment, the AAO concludes that the applicant's

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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 January 17, 2012.

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

> U.S. citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those risks due to terrorism.
>
> Bombings have also occurred in both government and public facilities in Metro Manila which resulted in a number of deaths and injuries to bystanders.
>
> Kidnap-for-ransom gangs operate in the Philippines and sometimes target foreigners as well as Filipino-Americans.
>
> . . . .

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 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).

> 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.

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, support letters, 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 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 field office director shall continue to process the Form I-485 application accordingly.