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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

[redacted]

H5

Date: MAR 02 2012 Office: SANTA ANA, CA FILE: [redacted]

IN RE: JAIME FRANCISCO DE JESUS

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, Santa Ana, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native of the Philippines and a citizen of Canada who was found to be 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 misrepresenting his marital status in order to obtain an immigrant visa as an unmarried son of a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his qualifying spouse and family.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated August 27, 2009.

The applicant's attorney provided a brief in support of the applicant's waiver application. In the appeal brief, the applicant's attorney asserts that the qualifying spouse will suffer emotional, psychological, medical and financial hardships as a result of her separation from the applicant. The applicant's attorney also indicates that the qualifying spouse could not relocate with the applicant because she has close family ties, including her children and parents, in the United States. The applicant's attorney also contends that she cares for her elderly father who has serious health issues. Further, the applicant's attorney indicates that the applicant's father is a qualifying relative as well, and that the applicant is his primary health care provider.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal brief, declarations from the qualifying spouse, the qualifying spouse's birth certificate, a marriage certificate, letters from the qualifying spouse's father's health care providers, the qualifying spouse's father's naturalization certificate, financial documentation, a handwritten note from the qualifying spouse's doctor, a copy of the qualifying spouse's prescriptions, a declaration from the applicant's father, a handwritten note from the applicant's father's doctor and copies of his prescriptions, declarations from the applicant's siblings, the applicant's siblings naturalization certificates and birth certificates, declarations from the applicant and qualifying spouse's children, photographs, scholastic documentation for the applicant and qualifying spouse's children, an affidavit from the applicant, a letter from the applicant's employer, a copy of the applicant's nursing license identification and documentation submitted with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 wife and father are both qualifying relatives in this case. 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 AAO finds that the applicant has established that his wife and father would suffer extreme hardship as a consequence of being separated from him. With respect to the emotional, psychological and medical hardships of the qualifying spouse, the record contains declarations from the qualifying spouse, a marriage certificate, copies of her prescriptions and a note from her doctor. The qualifying spouse indicates in her most recent declaration that she and the applicant "have established a life together over the past 26 years of marriage." She states that she loves him deeply and that he is her best friend and confidant. Further, she indicates her issues with depression, anxiety, stress and sleeplessness and explains that she has problems with hypertension, high cholesterol and a knee injury. A letter from the qualifying spouse's doctor and a copy of her prescriptions confirm her medical issues. With regard to the qualifying spouse's financial hardships upon separation, the record contains tax returns, wage statements for the qualifying spouse, a letter from the qualifying spouse's employer and documentation of expenses, such as tuition and mortgage payments. The documentation demonstrates that the applicant earns more money than the qualifying spouse, that the qualifying spouse relies on the applicant's income, and that the qualifying spouse would face financial hardship due to loss of the applicant's income, in light of her expenses.

With regard to the hardships that the applicant's father would incur upon his separation from the applicant, the applicant's father indicates that the applicant is his primary health care provider and that he is one hundred years old. The record contains affidavits from all of the father's children, a declaration from the applicant's father, copies of his prescriptions and a note from his doctor. The documentation indicates that the applicant is the primary care giver for his father, as he is a nurse, and is the youngest son in his family. The record also demonstrates that the applicant works a night shift so that he can care for his father in the day. Further, letters from the applicant's siblings reveal that the applicant, unlike some of his siblings, is in good health. As such, the applicant has established that the qualifying spouse and the applicant's father would suffer extreme hardship if either the applicant's spouse or father were to remain in the United States without the applicant.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to be with the applicant. The record contains identification documentation proving that the qualifying spouse has lived in the United States for over fifteen years and her children and parents live and have status in the United States. In addition, in her affidavit the qualifying spouse also asserted that she helps to take care of her elderly father. The record contains medical records for the qualifying spouse's father indicating that he has kidney disease, hypertension, high cholesterol and anemia, and requires hemodialysis three times per week. Further, the record reflects that it would be financially difficult for the applicant's spouse, considering her current income and expenses, to relocate to another country. As such, the cumulative effect of the hardships to the qualifying spouse, in light of her family ties to the United States, her length of residence in the United States, and her loss of employment were she to relocate, rises to the level of extreme.

Likewise, the applicant's father could not relocate with the applicant because of his advanced age and his family ties to the United States. He is over one hundred years old and in fragile health, and all his children live and have status in the United States. The letters from his children also demonstrate that the applicant's father has a close relationship with his children, as well as his grandchildren. The AAO concludes that the applicant's father would be unable to relocate with the applicant due to his age and ties to the United States.

Considered in the aggregate, the applicant has established that his wife and father would face extreme hardship if the applicant's waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(i) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's lawful permanent resident wife and U.S. citizen father would face if the applicant is not granted this waiver, regardless of whether either accompanied the applicant or remained in the United States, his support for the qualifying spouse, his father, his children and his family, as well as his service in the U.S. military and lack of a criminal record. The unfavorable factor in this matter is the misrepresentation that the applicant made in 1985 regarding his marital status in order to obtain a visa.

Although the applicant's violation of the immigration law cannot be condoned, his violation occurred more than twenty years ago, and the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.