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



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

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DATE: SEP 05 2012

OFFICE: CHICAGO

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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, Chicago, Illinois, 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

On August 20, 2010, the Field Office Director concluded that the applicant's U.S. citizen mother and U.S. citizen spouse would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility, but denied the waiver application as a matter of discretion.

On appeal, counsel for the applicant states that the Field Office Director erred in denying the application for a waiver of inadmissibility in the exercise of discretion.

In support of the waiver application, the record includes, but is not limited to briefs by counsel for the applicant, statements from the applicant's spouse, statements from the applicant's mother, employment, financial and health records for the applicant's spouse, biographical and financial records for the applicant, property ownership information for the applicant and his spouse, country conditions information concerning the Philippines, and documentation of the applicant's immigration history in the United States.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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.

...

The applicant states that he procured admission to the United States on June 1, 1994 using a Philippine passport and U.S. visa issued in the name of another individual. As a result, the Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(i) of the Act, as the son and spouse of U.S. citizens. In order to qualify for this waiver; however, he must first prove that the refusal of his admission to the United States would

result in extreme hardship to one of his qualifying relatives. The Field Office Director determined that the applicant established that both of his qualifying relatives would suffer extreme hardship if his waiver application was not approved. The AAO will not disturb the decision of the Field Office Director concerning hardship to the applicant's qualifying relatives. 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 a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Id.* 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 must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility 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.

In this case, the Field Office Director concluded that the applicant did not merit a waiver of inadmissibility as a matter of discretion. In particular, the Field Office Director concluded that the applicant did not establish that he was rehabilitated where the applicant's immigration

inadmissibility was related to his use of a fraudulent document and the applicant had used an assumed name from 1996 up until the date of his application for a waiver of inadmissibility. The Field Office Director stated that the applicant lacked sufficient moral character as a result of his use of the assumed name and that he did not provide evidence of rehabilitation or reformation of character, and, as a result, the negative factors in the applicant's case outweighed the positive factors. On appeal, counsel for the applicant states that the applicant disclosed the use of his assumed name in connection with his application for permanent residence and a waiver of inadmissibility and has not used his assumed name to avoid criminal prosecution or commit fraud. She also states that the applicant has been a responsible member of the community, paying his taxes, mortgage and car insurance.

The favorable factors in this matter are the extreme hardship that the applicant's U.S. citizen mother and spouse would experience if the applicant were not granted a waiver, the support that the applicant provides to his mother, his spouse, his daughter, and his siblings, the applicant's extensive family ties in the United States, and the applicant's property ownership. The record does not indicate that the applicant has a criminal record. Although the record indicates that the applicant has obtained a driver's license and social security card using a name and date of birth other than that which appears on his birth certificate, he has not been arrested or charged with any criminal offense and the AAO is not in a position to determine criminal liability for those actions. The unfavorable factors in this matter are the applicant's initial fraudulent entry into the United States and his unauthorized employment in the United States.

The immigration violations committed by the applicant are very serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i), the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.