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

U.S. Citizenship and Immigration Services

DATE: APR 10 2013 Office: SAN BERNARDINO File:

IN RE: Applicant:

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:

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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver granted.

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 a visa and admission to the United States by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to immigrate to the United States and reside with his U.S. citizen spouse.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* February 16, 2012.

On appeal, counsel contends that the field office director erred in concluding the applicant had not established that his inadmissibility would result in extreme hardship his U.S. citizen parents, and offers new evidence in support of this claim.

Counsel provides a brief with updated documentation of the emotional and physical hardship claims. The record also includes, but is not limited to: a statement from the qualifying relative and other supporting statements; a psychological evaluation and medical records, including prescriptions; proof of medical insurance; tax returns and other financial documentation, including pay stubs and expenses (mortgage payment, car payment, utility bills, credit card statements); birth, marriage and naturalization certificates; and country condition information. The entire record was reviewed and all relevant information considered in reaching this decision.

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

> 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)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [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 [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 [...].

The field office director noted the record to contain a finding that applicant had committed fraud or misrepresented a material fact in dealings with Consular Officers regarding visa matters, but did not review the facts in detail. The record leaves undisturbed the conclusion that, as the applicant never attended the training course which he claimed as his reason for obtaining a one-month validity B-1

visa in 1995, and thereafter remained in the United States without permission, he had misrepresented the purpose of his trip in order to obtain the visa and gain admission to the United States. The applicant does not contest this finding of inadmissibility on appeal.

A waiver of inadmissibility under section 212(i) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to either of them 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 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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Regarding hardship from relocation, the applicant contends that moving to the Philippines would impose extreme hardship on his naturalized U.S. citizen wife, to whom he has been married for 7½ years. The record reflects that she is nearly 50 years old, suffers from a number of medical conditions, has lived here since immigrating from her native Mexico in 1979 at the age of 15, has established roots in her community, and has a ten-year history working as a licensed nursing assistant. The qualifying relative has been diagnosed with major depression and anxiety, is being treated for it with prescription medication, and also takes several prescription and nonprescription medications for joint pain, high blood pressure, and anemia. *Psychological Evaluation,* November 25, 2011. Besides symptoms of depression and anxiety related to fear that her husband will be forced to depart, the psychologist notes that the applicant's wife worries about the financial impact on them of moving abroad where neither will have sufficient earning prospects to meet their mortgage obligations, they will be unable to live with the applicant's parents due to an already overcrowded extended family situation in the Philippines, and her future will be hard. Her other medical conditions include cartilage tears in both a knee and shoulder and a noncancerous tumor of the breast diagnosed in 2010 and requiring ongoing monitoring. The record also shows that the applicant's wife, aided by her husband, uses her nursing training to provide home treatment for her own, 84-year-old mother.

Supportive statements from friends and relatives corroborate the qualifying relative's claims that, having spent her entire adult life here, her significant ties are all to this country. She naturalized in 1996, moved to California from Louisiana to care for her mother in 2004 and now has become integrated into life in her adopted country and she has no ties to or knowledge of the language or culture of the Philippines. Besides her mother, all her siblings and their children live in the United States. Official U.S. government reporting notes that the general healthcare standard is variable, only approaching U.S. standards in major cities, and warns that U.S. medical insurance may not be accepted. *See Philippines—Country Specific Information,* Department of State, February 14, 2013. The qualifying relative reports that moving overseas will entail inability to meet mortgage obligations and thus mean losing their residence to foreclosure, and the record suggests that even full

employment in the Philippines – were she and her husband able to obtain it -- will bring insufficient income to cover this expense.

Relocating would mean leaving her established healthcare providers, loss of her support network, and likely foreclosure of her home. In light of her age and length of residence in the United States, ties here versus lack of ties to the Philippines, and inability to continue caring for her mother, the applicant has provided sufficient evidence for us to find the hardship his wife would experience by relocating would amount to hardship that is beyond the common or typical result of removal or inadmissibility of a loved one. The applicant has therefore met his burden of establishing that a qualifying relative would suffer extreme hardship were she to relocate abroad to reside with her husband due to his inadmissibility.

Regarding separation, the applicant's wife contends that thoughts of losing her husband – who is also the first boyfriend she has ever had -- has caused her emotional hardship. The psychologist diagnosed her depression and anxiety based on reported symptoms including crying, feelings of worthlessness and hopelessness, loss of appetite, insomnia, lack of energy, and auditory hallucinations, and attributed many of these problems to stress stemming from her husband's problematic immigration situation. *See Psychological Evaluation,* November 25, 2011. The report concludes that allowing her husband to remain with her in the United States would alleviate an underlying cause of her medical problems and stem an ongoing decline in her emotional state. A recent letter from her primary care doctor confirms the negative impact on the applicant's wife of the threat of her husband's removal, noting particularly that her symptoms have rendered her at times unable to function at work, and states that her prognosis for recovery from depression improves if the applicant is able to remain here.

The record reflects that the applicant contributes a significant portion of household income, although it appears that an employment change necessitated by work-related injuries in 2007 may have diminished his earning capacity. Documentation shows that in the first year of their marriage, the applicant and his wife reported nearly $55,000 in income for 2005. W-2 Wage and Earning Statements reflect that the applicant's earnings since 2002 were in the mid-$30,000 range, but declined when he left a nursing position, while his wife's have remained in the low-$20,000 range as a nursing assistant. The record suggests that, although the applicant is no longer the primary breadwinner, with earnings that are approximately one-third of household income, he compensates by using his nursing training to alleviate much of his wife's burden of providing home care to her mother. Documentation shows that he worked from 1988 – 1990 as a nursing aide to persons with disabilities in the Philippines before attending the policy academy, and had similar employment in a care facility for mentally disabled (i.e, mainly autistic) adults until forced by injury to give it up. Although lacking information about the applicant's earnings history as a Philippine police officer from 1990 to 1995, as well as about his prospects for future employment, the AAO notes that country condition information substantiates the claim that high unemployment is endemic in his native country, while wages for those able to find jobs are much lower than in the United States.

Coupled with evidence that the applicant's inadmissibility represents a financial hardship, the report regarding psychological issues reflects that the applicant has established his wife is suffering, and will continue to experience, extreme hardship if he cannot remain in the United States. The record

shows that the cumulative effect of the emotional and financial hardships the applicant's wife will experience due to her husband's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. Should he have to depart, the evidence suggests that she would have difficulty affording to travel to the Philippines to visit her husband to ease the pain of loss. The AAO thus concludes that, based on the totality of the circumstances, were the applicant's wife to remain in the United States without the applicant due to his inadmissibility, she would suffer hardship that rises to the level of extreme.

Review of the documentation on record, when considered in its totality, reflects the applicant has established a qualifying relative 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 she 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 "balance 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 wife would face if the applicant were to reside in the Philippines, regardless of whether she accompanied the applicant or remained here; the applicant's lack of any criminal record; passage of nearly 17½ years since the applicant was admitted to the country; supportive statements and community ties; homeownership;

and a history of stable employment. The only unfavorable factors are the applicant's overstay of his visa and misrepresentation to obtain it.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO thus finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.