



U.S. Citizenship
and Immigration
Services

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HR

FILE:

Office: SAN FRANCISCO

Date: JUL 20 2006

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks 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 his U.S. citizen wife.

The district director concluded that the applicant 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 District Director*, dated February 17, 2004.

On appeal, counsel for the applicant contends that the applicant's wife will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, dated March 19, 2004. Counsel asserts that the district director failed to consider all elements of hardship to the applicant's wife in aggregate. *Statement from Counsel on Form I-290B*, dated March 19, 2004. Counsel further asserts that the district director erred in finding that the applicant committed fraud on more than one occasion. *Id.*

The record contains a brief from counsel in support of the appeal; a statement from the applicant's wife; photos of the applicant and his family members; medical records for the applicant's wife and mother-in-law; a report from a licensed psychologist regarding the applicant's wife's mental health; copies of pay stubs, tax records, insurance records, and bills for the applicant and his wife; copies of the permanent resident card and passport for the applicant's mother-in-law; letters from the applicant's and his wife's employers; a letter from the applicant's church; letters from the applicant's wife's work associates and friends; a statement from the applicant regarding his entry to the United States using a fraudulent passport; a copy of the applicant's birth certificate; a copy of the applicant's Form I-94; a copy of the applicant's wife's naturalization certificate, and; a Form I-864, Affidavit of Support, executed by the applicant's wife on his behalf. The entire record was reviewed and considered in rendering this decision.

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

- (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 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.

The record reflects that on or about September 17, 2000, the applicant entered the United States using a fraudulent passport. Specifically, the applicant executed a sworn statement on May 19, 2003 in which he stated that he purchased a passport and visa from an individual in the Philippines. *Statement from Applicant*, dated May 19, 2003. Though he intended to obtain a lawfully issued passport and U.S. visa, the individual gave him fraudulent documents that included the applicant's photo but the name of another person. *Id.* The applicant was aware that the documents were fraudulent, yet he proceeded to use them to enter the United States. *Id.* Based on the foregoing, the applicant entered the United States by fraud, and made a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. Accordingly, the applicant 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).

Counsel asserts that the district director erred in finding that the applicant committed fraud on more than one occasion. *Brief in Support of Appeal* at 11, dated March 19, 2004. Counsel states that the district director took this erroneous finding into consideration in determining that the applicant does not warrant a favorable exercise of discretion. *Id.* However, it is noted that on July 3, 2002 the applicant submitted a Form I-485, Application to Register Permanent Resident or Adjust Status, in which he attested under penalty of perjury that he had never, "by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, as visa, other documentation, or entry into the U.S., or any other immigration benefit." See *Applicant's Form I-485* at Part 3, Item 10, submitted on July 3, 2002. As the applicant attested that he was aware that he was entering the United States using fraudulent documents on September 17, 2000, he was aware that he had committed such fraud as of July 3, 2002, the date he filed his Form I-485 application. See *Statement from Applicant*, dated May 19, 2003. Thus, the applicant's misrepresentation on Form I-485 constitutes an additional instance of misrepresentation that may serve as an independent basis for inadmissibility under section 212(a)(6)(C)(i) of the Act.

Accordingly, the applicant has not shown that he was erroneously deemed inadmissible.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s wife would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The applicant’s wife stated she will experience extreme hardship if the applicant is compelled to depart the United States. *Statement from Applicant’s Wife*, dated January 20, 2004.

She provided that she takes care of her mother who suffers from several chronic illnesses. *Id.* at 1. She indicated that she is the primary caregiver for her mother, as all of her brothers and sisters have their own families and financial obligations. *Id.* at 1. She stated that her mother requires constant assistance. *Id.* at 1. She explained that she used to have her landlady watch her mother while she worked, but now that she is married she and the applicant take turns assisting her mother while the other engages in employment. *Id.* at 1.

The applicant’s wife provided that she suffers from illness, including diabetes and depression. *Id.* at 2. She stated that the applicant’s potential deportation has exacerbated her anxiety and depression, and that she would be overwhelmed if she is forced to forego his support. *Id.* The applicant’s wife reported that she sought the help of a licensed psychologist due to her stress and sleep loss. *Id.* The applicant’s wife indicated that she receives health insurance through the applicant’s employment, and that she would lose this benefit if he departs the United States. *Id.* at 3.

The applicant’s wife expressed that she would experience significant hardship if she relocates to the Philippines with the applicant, including separation from her immediate family, loss of employment and related benefits, loss of medical insurance, financial uncertainty, and a risk of harm due to conditions in the Philippines and her status as a United States citizen. *Id.* at 3. She indicated that she would have limited employment opportunities in the Philippines. *Id.* at 5. She stated that her mother would be unable to accompany her abroad, which would place stress on her and her family. *Id.* at 4. She provided that all of her immediate family members are in the United States and are either U.S. citizens or permanent residents, including one brother, three sisters, and her mother. *Id.* She stated that she is fully integrated into life in the United States, as she has resided here for 19 years. *Id.* The applicant’s wife stated that she would be at risk of harm in the Philippines due to poor political and security conditions there. *Id.* at 6-8. The applicant’s wife further stated that health conditions in the Philippines are poor, and that she would be subject to substandard health care and environmental health risks. *Id.* at 8. She explained that she would be unable to obtain adequate care there. *Id.* at 8-9.

The applicant's wife asserted that she will experience economic hardship if the applicant departs. *Id.* at 4-5. She explained that she earns approximately \$1,383 per month, yet her household's expenses total \$2,211.62. *Id.* at 5.

On appeal, counsel contends that the applicant's wife will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, dated March 19, 2004. Counsel asserts that the district director failed to consider all elements of hardship to the applicant's wife in aggregate. *Id.* at 3-9; *Statement from Counsel on Form I-290B*, dated March 19, 2004. Counsel summarizes the hardship factors for the applicant's wife as follows:

- (1) spousal/family separation;
- (2) mental, emotional and physical hardship as a result of spousal/family separation;
- (3) wife's existing medical conditions of diabetes and depression, diagnosed in 1999 and 2001, respectively;
- (4) separation from 81 year old mother who is sickly and for whom she is responsible for as primary and sole caregiver;
- (5) fact that all of immediate family members – mother and siblings – are US citizens and permanent residents;
- (6) No immediate family members in the Philippines;
- (7) integration to American society;
- (8) danger to US citizen wife because of political and social instability in the Philippines resulting from present terrorist and extremist groups, and
- (9) poor medical care and loss of health insurance as a result of relocating to the Philippines.

Brief in Support of Appeal at 5. Counsel further asserts that the district director abused his discretion in characterizing the applicant's wife's decision of whether to relocate abroad with the applicant as a "personal choice." *Id.* at 7. Counsel cites the decision of the Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), to stand for the proposition that such a characterization improperly creates a per se rule that eliminates Citizenship and Immigration Services' (CIS) need to consider family separation. *Id.* at 7. Counsel contends that family separation is of primary importance when assessing hardship to an applicant's spouse. *Id.* at 7-8. Counsel asserts that the district director placed undue emphasis on the length of the applicant's marriage and the fact that he and his wife have no children. *Id.* at 8.

Counsel notes that the psychiatrist and licensed psychologist who examined the applicant's wife both found that her marriage helps her manage her mental health, and that she has come to depend on the physical, emotional, and financial support of the applicant. *Id.*

Counsel states that the district director failed to fully consider the financial impact the applicant's departure would have on his wife. *Id.* at 9. Counsel asserts that the applicant's wife's income is not sufficient to meet their household's monthly expenses. *Id.* Counsel provides that, should the applicant's wife relocate to the Philippines, she would experience financial uncertainty due to poor economic and employment conditions there. *Id.* at 10.

Counsel reiterates that the applicant's wife's ties to the United States are strong, and that her ties to the Philippines are almost nonexistent. *Id.* Counsel asserts that relocation to the Philippines constitutes extreme hardship for the applicant's wife. *Id.*

The record contains medical documentation to show that the applicant's wife has been diagnosed with diabetes, for which she receives ongoing treatment. *Patient Progress Record*, dated June 12, 2000; *Letter from [REDACTED]*, dated January 13, 2004. The applicant's wife's medical records further reflect that

physicians observed that she was “anxious and depressed” as of April 16, 2001 due to the fact that she was compelled to devote a significant portion of her time to caring for her mother to the detriment of her personal life. *Note from [REDACTED] M.D.*, dated April 16, 2001. The record contains a letter from Dr. [REDACTED] from the Department of Psychiatry of the Kaiser Permanente Medical Center in Vellejo, California in which he states that the applicant’s wife was diagnosed with Depression and Stress. *Letter from Dr. [REDACTED]* dated January 4, 2004. Dr. [REDACTED] expressed his opinion that the applicant’s wife depends on the applicant for “physical, emotional, and financial support” and that the applicant’s deportation “will likely worsen the [applicant’s wife’s] depressed state.” *Id.* The record reflects that the applicant’s wife was prescribed Prozac on March 15, 2004. *Prescription from Kaiser Foundation Health Plan Pharmacy*, dated March 15, 2004.

The record contains an evaluation of the applicant’s wife’s mental health from Dr. [REDACTED] a licensed psychologist. Dr. [REDACTED] discussed the applicant’s wife’s family background, including the fact that her father was an alcoholic and he caused disruption in the family household until he died when the applicant’s wife was age 14. *Report from Dr. [REDACTED]* dated January 3, 2004. Dr. [REDACTED] explained that the applicant’s wife had a hysterectomy in 1999, and afterwards she experienced feelings of hopelessness and worries about her future, in part due to the fact that she would be unable to realize her vision of having children. *Id.* at 3. Dr. [REDACTED] stated that the applicant’s wife’s physician advised her to see a psychiatrist, yet she declined to do so. *Id.* Dr. [REDACTED] indicated that the applicant’s wife reported feeling better after she was married to the applicant. *Id.* Dr. [REDACTED] stated that the applicant indicated that her mood was “good” yet she had some feelings of depression “on and off.” *Id.* Dr. [REDACTED] concluded that the applicant’s wife exhibited symptoms of Dysthymic Disorder, “chronic depression that will limit an individual’s ability to reach their potential in vocational and social functioning.” *Id.* at 4. Dr. [REDACTED] provided that the applicant’s wife is “successful in the area of vocational performance but that her functioning in social relations was limited.” *Id.* Dr. [REDACTED] stated that “[h]er dysfunction in social relations is attributable to the Dysthymic Disorder with a childhood onset.” *Id.* Dr. [REDACTED] concluded that the applicant’s wife is at “risk of a recurrence of symptoms of major depression that will significantly impair her social and vocational functioning.” *Id.* at 5.

It is noted that Dr. [REDACTED] commented that the applicant studied psychology in college, and she earned a degree in 1981. *Id.* at 2.

Upon a complete review of the evidence of record, the AAO finds that the applicant has established that his wife will experience extreme hardship if he is prohibited from remaining in the United States.

The record contains documentation to show that the applicant’s wife suffers from emotional health problems that began in her childhood. Three separate doctors have determined that the applicant’s wife exhibits depression and stress, and a licensed psychologist determined that she is at risk of major depression that “will significantly impair her social and vocational functioning.” The applicant’s wife has been prescribed Prozac, and antidepressant medication. The applicant’s wife has experienced significant stressors in her past, including witnessing the death of her alcoholic father at the age of 14 and foregoing an independent social life in order to serve as the primary care giver for her ailing mother. While the record does not contain evidence that the applicant’s wife currently engages in regular visits with a mental health professional, there is sufficient documentation to show that her emotional health has been deemed tenuous by three doctors.

The record further shows that the applicant’s wife is close with her 81-year-old mother, they have resided together since 1983, and the applicant’s wife has devoted significant effort in caring for her mother. The applicant’s wife stated to Dr. [REDACTED] that she and her mother provided companionship for each other, yet her

mother's health degenerated over the last eight years and the applicant's wife became increasingly lonely until she met the applicant. The record shows that the applicant's wife's mother has required psychiatric hospitalization, she suffers from Dysphagia, Peptic Ulcer Disease, Diabetes, Arthritis, Anxiety Disorder, and Chronic Obstructive Lung Disease, and she has been prescribed six medications including anti-psychotic drugs. Medical care in the Philippines is adequate in urban areas yet cash payment is often required. *U.S. Department of State Consular Information Sheet, Philippines*, dated November 24, 2003. Based on her mother's poor health and long residence in the United States, it is not reasonable for the applicant's wife to relocate her mother to the Philippines. Thus, should the applicant's wife return to the Philippines with the applicant, she would likely be compelled to separate from her mother. Such family separation, after many years of close companionship, constitutes a significant hardship for the applicant's wife.

The record contains references to the applicant's wife's four older siblings who reside in the United States, yet the applicant has not indicated where they reside, what are their specific family or financial circumstances, and whether they are available to assist in the care of their mother should the applicant's wife depart the United States. It is understood that the applicant's wife would experience additional emotional distress regarding her mother's welfare should she be no longer able to provide assistance. The AAO lacks ample evidence to determine whether her siblings are able to assume responsibility for their mother. Yet, it is evident that altering her mother's situation would constitute emotional hardship for the applicant's wife.

Returning to the Philippines poses numerous other hardships for the applicant's wife, including the need to secure new employment, separation from her siblings who are all in the United States, adjustment back to life in the Philippines after over 20 years in the United States, and the financial burden of moving and relinquishing her current employment. It is noted that the applicant requires care for diabetes and her emotional health. While her conditions are likely treatable in the Philippines, the loss of her health insurance would require the applicant's wife to incur significant medical expenses. Should she be unable to afford medical services, her conditions may go untreated which constitutes a substantial health risk. While political and security conditions in the Philippines are poor in certain areas, the record does not support that the applicant's wife would be at imminent risk of harm in the more urban areas. However, it is understood that security concerns, particularly for U.S. citizens, would contribute to psychological distress for the applicant's wife.

When considered in aggregate, the factors of hardship to the applicant's wife, should she relocate to the Philippines, constitute extreme hardship. This finding is largely based on the fact that the applicant's wife's mental health is tenuous, and separation from her mother would cause significant stress and exacerbate her condition. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

Counsel asserts that the district director abused his discretion in characterizing the applicant's wife's decision of whether to relocate abroad with the applicant as a "personal choice." However, the district director's reference to personal choice is not per se error. Pursuant to section 212(i)(1) of the Act, in order to establish eligibility for a waiver, an applicant must show that denial of the application "would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien." Section 212(i)(1) of the Act (emphasis added). Accordingly, the applicant must show that all of his wife's options constitute extreme hardship. If the applicant's wife would experience extreme hardship if she relocated abroad, yet she would not experience extreme hardship if she remained in the United States, the applicant would have failed to show that denial of his application "would result in extreme hardship." In such circumstances, should the

applicant's wife relocate abroad, it would be her "personal choice" to endure greater hardship. In adjudicating an application for a waiver under section 212(i)(1) of the Act, Citizenship and Immigration Services (CIS) must consider all hardships to qualifying relatives relating to relocating abroad and remaining in the United States. As the applicant has shown that his wife will experience extreme hardship if she relocates abroad, the AAO will assess whether she will experience extreme hardship if she remains in the United States.

As discussed above, the record shows that the applicant's wife's mental health is tenuous. Two mental health professionals expressed their opinions that the applicant's wife depends on the applicant's physical, financial, and emotional support, and that the applicant's absence would worsen her condition. Dr. [REDACTED] determined that the applicant's wife is at risk of major depression that "will significantly impair her social and vocational functioning." Dr. [REDACTED] further described the circumstances of the applicant's wife prior to her marriage, and indicated that the applicant's companionship greatly improved the applicant's wife's emotional state. Thus, it is evident that the applicant's wife would experience serious psychological hardship if she is separated from the applicant.

The applicant's wife provided that the applicant assists her in caring for her mother while she works. Thus, it is understood that the applicant's wife would endure hardship if she is compelled to again care for her mother alone. As noted above, the AAO lacks ample evidence to determine whether the applicant's wife's siblings are able to share responsibility for their mother. Yet, it is evident that altering her mother's situation would constitute emotional hardship for the applicant's wife.

Counsel asserts that the applicant's wife will endure financial hardship if the applicant departs, as her income would be insufficient to meet her monthly needs. Yet, the applicant's wife earned approximately \$28,000 in 2002, and she continues to work with the same employer. Thus, as noted by the director, the applicant's wife earns an income above the 2006 poverty line, evaluated as \$13,200 for a family of two (taking into consideration the applicant's wife and her mother.) *See Form I-864P, Poverty Guidelines*. While the applicant's wife's income is less than her household's current expenses, it is understood that expenses such as food, clothing, and consumption of utilities will be reduced by the applicant's absence. The applicant's wife may be compelled to alter her housing to reduce her costs, yet the applicant has not shown that she would suffer serious economic hardship. However, the changes in the applicant's wife's living conditions are considered to the extent that they exacerbate her emotional hardship.

When considered in aggregate, the factors of hardship to the applicant's wife, should she remain in the United States without the applicant, constitute extreme hardship. Again, this finding is largely based on the fact that the applicant's wife's mental health is tenuous, and separation from the applicant would cause significant stress and exacerbate her condition. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

Based on the forgoing, the AAO finds that the applicant's wife will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if he is required to depart the United States.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General

(now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant knowingly entered the United States with a fraudulent passport on or about September 17, 2000. On July 3, 2002 the applicant submitted a Form I-485 application in which he failed to reveal that he previously entered the United States by fraud or misrepresentation.

The positive factors in this case include:

The applicant has significant family ties to the United States, including his wife, mother-in-law, sisters-in-law, and brother-in-law; the applicant's wife would suffer extreme hardship if he is compelled to depart the United States; the applicant submitted an affidavit in which he fully explained the terms of his entry to the United States, and he expressed remorse regarding his violation of U.S. immigration laws; the applicant assists in caring for his mother-in-law, a U.S. citizen; the applicant has a record of working and paying his taxes in the United States; the applicant is involved in his community via a religious organization, and; the applicant has not been convicted of any crimes.

Although the applicant's immigration violations cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.