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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H/r

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES DISTRICT OFFICE

Date: MAR 02 2007

IN RE:

[REDACTED]

PETITION: 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 PETITIONER:

[REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of the Philippines, was found 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 and reside with her United States citizen husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband, a United States citizen, would suffer extreme hardship if the applicant were required to return to the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

As a preliminary matter, the AAO agrees with counsel that the director applied the wrong section of the Act to this case. The district director analyzed the waiver application under section 212(h) of the Act. However, she should have analyzed the application under section 212(i) of the Act.

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

- (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 states, in pertinent part, the following:

- (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.

A section 212(i) waiver of the bar to admission resulting from a 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 herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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).

Thus, the first issue to be addressed is whether the applicant's return to the Philippines would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States on February 14, 1992, using a passport and single-entry B-1/B-2 visa issued to another person. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant is 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). The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on or around March 16, 2001, and the instant Form I-601 was filed shortly thereafter. She does not dispute her inadmissibility.

On appeal, counsel contends that the applicant qualifies for a waiver of inadmissibility. Counsel contends that the applicant's forced return to the Philippines would inflict extreme hardship on her husband. Counsel contends that the applicant's husband would experience extreme hardship if the applicant were returned to the Philippines, regardless of whether he accompanied her or remained in California.

The record contains documentation regarding the applicant's husband's ongoing medical condition. According to an April 16, 2002 letter from his physician he has been undergoing medical treatment, including psychotherapy and administration of the drug paxil, for severe anxiety and depression since August 1998.

The record also contains an evaluation from the applicant's husband's psychologist, Dr. [REDACTED]. According to this evaluation, dated October 27, 2004, the applicant's husband has been battling panic disorder, a "severe emotional condition," for thirteen years. His symptoms have been managed through administration of such psychotropic medications as [REDACTED]. clinical findings state, in pertinent part, the following:

His clinical history and evolution of his condition seems to indicate that the relationship with his wife and her inclusion in his life has had a significant and powerful stabilizing effect in him, and he has been able to improve ever since [the relationship began], and he has been able to improve ever since. He has found a strong emotional support in this close relationship with his wife, and he feels that he could not manage to remain basically stable without her by his side. . . .

[The applicant's husband] has a close relationship to his own family: parents, 4 brothers[,] and 1 sister, [and] being part [of the family] and staying close to them has also become a significant part of his sense of wellbeing, and he become[s] distressed just to consider having to live away from them, say, in another country[,] if he had to follow his wife in the event of her being removed/expelled. . . .

[The applicant's husband] is still affected by his emotional condition and, besides the medication/psychotropic treatment, he will be undergoing regular, ongoing, [p]sychotherapy treatment in the community. Most certainly, moving out of the [c]ountry would cause him to interrupt a clinically needed treatment.

The record also contains affidavits from the applicant's husband. In his first affidavit, dated May 1, 2002, the applicant's husband discusses the extreme hardship he would face if the applicant were to return to the Philippines, regardless of whether he would go with her or remain in California. He notes that his anxiety and depression had been under control until recently, when the uncertainty surrounding the applicant's immigration status arose. He discusses the trouble he is currently having sleeping and eating. Noting that his family has lived in the United States for several generations,¹ he states that it would be very difficult for him to return with her to the Philippines, as he does not speak the language and has never seen the country. He contends that it would be very difficult for him to find a job and, even if he were able to do so, the income that he would receive would be extremely low (his psychologist had noted that if he were to leave his long-term employment—18 years—with Southern California Edison, he would sustain a significant loss of accrued retirement benefits).

The applicant's husband's second affidavit, dated November 6, 2004 reiterates the assertions of the first affidavit and adds that he would lose his retirement and health insurance benefits if he were to leave his present employment and accompany the applicant to the Philippines.

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. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The AAO finds that the applicant's husband would face extreme hardship if the applicant is required to return to the Philippines. If he remains in the United States without the applicant, he would face setbacks in his medical treatment, as attested by both doctors treating the applicant's husband. The AAO also finds that he would face extreme hardship if he were to accompany the applicant to the Philippines. A

¹ The record establishes that the applicant's husband was born in Arcadia (Los Angeles County), California on September 25, 1963.

citizen of the United States by birth, the applicant's husband has never visited the Philippines, nor does he speak that country's language. He would lose the health insurance that covers his current medical treatment, and it is unlikely that he would find a job with comparable health insurance benefits that would enable him to obtain coverage for comparable medical treatment. He would also leave behind an extended family network in California, and lose his accrued retirement benefits from his current position.

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.

The favorable factors in this matter are the extreme hardship the applicant's husband would face if the applicant were to return to the Philippines, regardless of whether he accompanied her or remained in the United States, a United States citizen husband, lack of a criminal record, gainful employment, and the passage of fifteen years since the immigration violation. The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States, and periods of unauthorized presence and employment.

While the AAO does not condone her actions, the AAO finds that the hardship imposed on the applicant's husband as a result of her inadmissibility outweighs 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 under section 212(i), 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.