

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: SACRAMENTO, CALIFORNIA

Date:

OCT 17 2007

IN RE:

Applicant:

[REDACTED]

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:

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director (field office director), Sacramento, California, 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 and reside with her U.S. citizen husband.

The applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, with the USCIS San Francisco District Office, on August 19, 2003. The District Director, San Francisco, concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *Decision of the District Director, San Francisco*, dated April 13, 2004. The applicant filed a Form I-290B appeal on May 10, 2004, yet the AAO affirmed the district director's decision of April 13, 2004. *Decision of the AAO*, dated January 10, 2006. The applicant filed a second Form I-601 application for a waiver with the USCIS Sacramento Field Office on September 14, 2006. The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application for a waiver accordingly. *Decision of the Acting Field Office Director*, dated May 8, 2007. The applicant filed the present appeal on June 11, 2007.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, dated June 29, 2007. Counsel asserts that the field office director failed to consider all of the evidence cumulatively. *Statement from Counsel on Form I-290B*, June 5, 2007. Counsel further alleges that the district director failed to consider favorable factors that outweigh the single negative factor regarding the applicant's situation, and that the district director did not adequately consider the impact that hardship to the applicant's stepdaughter has on the applicant's husband. *Id.*

The record contains a brief from counsel in support of the appeal; reports from a licensed psychologist and a licensed psychotherapist regarding the impact that the applicant's inadmissibility is having and will have on the applicant, the applicant's husband, and the applicant's stepdaughter; statements from the applicant's husband; a statement from the applicant's stepdaughter; a copy of a birth certificate for the applicant's stepdaughter; a medical record for the applicant's stepdaughter; a list of monthly expenses for the applicant's household in the United States; documentation in connection with a home owned by the applicant and her husband; copies of family photographs; evidence of the employment of the applicant and her husband; the applicant's marriage certificate; the birth certificate of the applicant's husband; bank statements and tax records for the applicant's husband, and; documentation regarding current conditions in the Philippines. The entire record was 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 October 27, 1994, the applicant entered the United States using a passport and U.S. visa that she obtained under her sister's name. Thus, the applicant procured a visa and admission into the United States by willfully misrepresenting a material fact (her true identity.) 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). The applicant does not contest her inadmissibility on appeal.

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 herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present matter is hardship suffered by the applicant's U.S. citizen husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise favorable 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 Board 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 husband 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.

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, dated June 29, 2007. The applicant's husband stated that the applicant's departure from the United States would have a serious impact on his and the applicant's stepdaughter's lives. *Statement from Applicant's Husband*, dated August 23, 2006.

The applicant's husband explained that his daughter, [REDACTED], was born with drug addiction and serious medical problems due to her mother's substance abuse. *Id.* at 1. He indicated that he has full custody of [REDACTED]. *Id.* The applicant's husband stated that the applicant has served as [REDACTED] mother for the last five years, including offering her love and support, as well as performing tasks such as taking [REDACTED] to medical appointments and ensuring she takes her medication. *Id.*

The applicant's husband stated that he suffers from high cholesterol, severe allergies, and he recently had his gall bladder removed. *Id.* He indicated that he suffers from knee and back pain due to a recent accident. *Id.* The applicant's husband provided that the applicant takes care of him and [REDACTED] and that they rely on her for assistance. *Id.*

The applicant's husband stated that he provides assistance to his elderly parents, and that they suffer from health problems. *Id.* He indicated that his mother is undergoing treatment for breast cancer. *Id.* He explained that he has four brothers and sisters who also live in the Bay area, yet his parents rely on him for financial support and assistance. *Id.* He stated that he does not wish to leave them. *Id.*

The applicant's husband explained that he and [REDACTED] would have great difficulty residing in the Philippines, as they do not speak the language and they are unfamiliar with the culture. *Id.* at 2. He stated that he would be unable to secure sufficient employment, and he and [REDACTED] would not be able to avail themselves of the quality of healthcare or medical insurance that they receive in the United States. *Id.* The applicant's husband expressed concern regarding the emotional impact of forcing [REDACTED] to adapt to an unfamiliar country. *Id.*

The applicant's husband explained that the applicant's departure would cause significant economic hardship for him and his family. *Id.* He explained that he and the applicant purchased a home, and that meeting their mortgage and other expenses requires both of their incomes. *Id.* He explained that the applicant's family in the Philippines is of modest means, and they are unable to help him and the applicant. *Id.*

The record contains a report from [REDACTED] a licensed psychologist, in which [REDACTED] assessed the psychological impact the applicant's immigration difficulties are having on the applicant's family. *Psychological Assessment*, dated June 25, 2007. [REDACTED] noted the applicant's husband is experiencing depression and anxiety, and that such symptoms will increase if the applicant is caused to depart the United States. *Id.* at 2-4. [REDACTED] observed that the applicant's husband is particularly concerned about the effects that the applicant's possible departure will have on [REDACTED]. *Id.* at 3-4. [REDACTED] expressed the opinion that the applicant's husband lacks the psychological skills necessary to help [REDACTED] cope with the loss of the applicant's presence, and thus both [REDACTED] and the applicant's husband will endure significant emotional

difficulty should the present waiver application be denied. *Id.* [REDACTED] noted that [REDACTED] school performance has decreased over the previous year due to the stress of the possible departure of the applicant. *Id.* at 2.

The record contains a second psychological assessment from [REDACTED] a licensed psychotherapist. [REDACTED] provides that the applicant's husband and stepdaughter will have significant emotional consequences if the applicant is prohibited from remaining in the United States. *Report from* [REDACTED] [REDACTED] dated May 11, 2004. [REDACTED] explains that the applicant's stepdaughter was born with drug addiction and fetal alcohol syndrome, and thus she has special needs. *Id.* at 1. Ms. [REDACTED] observes that the applicant's husband has a very close relationship with his daughter having gained full custody of her early in the first year of her life. *Id.* at 4. [REDACTED] states that the applicant is the only mother that [REDACTED] has known, and that they are closely bonded. *Id.* [REDACTED] expresses the opinion that the applicant's husband is very concerned about the effect that separation from the applicant would have for [REDACTED], and that such separation would have substantial emotional consequences for the applicant's husband. *Id.* at 4-5.

[REDACTED] states that the applicant's husband would not relocate to the Philippines with the applicant, as the culture is unfamiliar to both him and his daughter, and his daughter may not be able to receive specialized healthcare there. *Report from* [REDACTED] at 6. [REDACTED] further notes that the applicant's husband's disabled father provides some care for [REDACTED] and that the applicant's husband in turn provides assistance to his father, which is expected to increase. *Id.* Counsel states that the applicant's husband has significant ties to the United States, as his parents and daughter reside here and he has never lived anywhere else. *Id.* at 9.

Counsel suggests that the district director erroneously applied a stricter standard of hardship, namely "Exceptional and Extremely Unusual Hardship," that is only applicable to suspension of deportation cases. *Brief from Counsel* at 3-5. Counsel asserts that, in *Matter of Monreal*, 23 I&N Dec. 56, 23 Immigr. Rep. B1-76 (BIA 2001), the Board of Immigration Appeals (BIA) determined that an applicant does not need to establish hardship "'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country" in order to establish extreme hardship in the context of a waiver proceeding. *Id.* at 4.

Counsel takes issue with the district director's reference to *Matter of* [REDACTED] 22 I&N Dec. 560, 565-566 (BIA 1999) regarding whether an applicant's underlying fraud or misrepresentation can be deemed a negative factor in balancing equities. *Id.* at 7. Counsel asserts that the misrepresentation in the present matter can be distinguished from that under consideration in *Matter of* [REDACTED] as it is a significantly less egregious offense. *Id.*

Upon review, the applicant has established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. The applicant's husband expressed that he will experience significant emotional hardship if he and [REDACTED] are separated from the applicant. Counsel stresses that the applicant's husband will be particularly affected by having [REDACTED] lose the companionship and assistance of the applicant. The record reflects that the applicant's husband has devoted substantial effort to helping [REDACTED] overcome her health problems, with success, and that the prospect of taking [REDACTED] to a country where she would lose the benefit of her medical insurance and U.S. healthcare is causing him psychological distress.

Direct hardship to an applicant's child is not a consideration in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members.

The record supports that the applicant's husband would experience extreme hardship should he relocate to the Philippines with the applicant. The applicant's stepdaughter has a history of medical needs above those required by the ordinary child due to her mother's substance abuse around the time of her birth. The applicant's husband is emotionally invested in providing [REDACTED] with a stable home and quality medical care. Should the applicant's husband relocate to the Philippines, he would likely be compelled to relinquish his current employment and interrupt his medical insurance. The applicant's husband does not speak Tagalog, he is unfamiliar with Filipino culture, and his access to an immigration status that allows for legal employment is undetermined. Thus, the applicant's husband's employment opportunities in his current field, as a truck driver, are unknown, and he would likely have an interruption in his and [REDACTED] health coverage. It is evident that interference with the applicant's husband's ability to provide economic support and healthcare for [REDACTED] would cause significant emotional hardship.

It is understood that hardships that [REDACTED] would experience in the Philippines would compound the emotional consequences for the applicant's husband. The record reflects that [REDACTED] has experienced declining performance in school due to the stresses of the applicant's immigration difficulties. Adapting to a new culture and language would present significant challenges for her, and would further disrupt her educational progress. [REDACTED] requires consistent and quality medical care, and any complications in or lack of care would cause substantial distress for the applicant's husband.

The applicant's husband has significant ties to the United States, including four brothers and sisters and his parents who reside near him. He stated that his parents have medical problems and they rely on him for economic support and other assistance. It is evident that the applicant's husband will endure emotional hardship if he is no longer able to directly assist his parents.

Relocating to the Philippines would involve significant economic hardship for the applicant's husband, including the loss of his and the applicant's income and consistent employment, as well as the expense of relocating.

Thus, the record shows by a preponderance of the evidence that the applicant's husband would experience extreme hardship should he relocate to the Philippines with the applicant.

The record further reflects that the applicant's husband will experience extreme hardship should he remain in the United States without the applicant. The applicant's husband expressed that he is close with the applicant, and they have been married since 2002. He would experience direct emotional hardship as a result of being separated from the applicant. Such separation of the applicant from her husband is given significant weight in the present proceeding. *See Salcido-Salcido at 1293.*

The applicant's husband expressed serious concern regarding the mental wellbeing of [REDACTED] and the impact losing the applicant's presence would have on her. He indicated that the applicant is the only mother [REDACTED] has known, and that the psychological impact of losing her mother would have a serious detrimental effect on [REDACTED]. This concern is supported by the two psychological evaluations from [REDACTED] and Ms.

Schenk. It is evident that emotional hardship suffered by [REDACTED] would increase the emotional hardship to the applicant's husband should the applicant depart the United States.

The applicant's husband explained that the applicant cares for [REDACTED] including taking her to medical appointments and ensuring that she takes her medication. As discussed above, the applicant's stepdaughter has medical needs beyond those of an ordinary child. Should the applicant's husband lose the applicant's assistance in caring for [REDACTED], he would endure additional hardship in providing all of her care by himself or hiring a caregiver.

The record further supports that the applicant's husband would endure significant economic challenges should the applicant depart the United States and lose her income. The applicant submitted an account of her household expenses that reflects average monthly expenditures of approximately \$4,500, which totals approximately \$54,000 annually. The record contains an employment verification letter for the applicant's husband that reports that he earns \$21 per hour over a 40-hour workweek. Thus, the applicant's husband earns a gross income of approximately \$43,700 annually. The record contains a letter verifying that the applicant has held the position of Fulfillment Coordinator with a marketing company since September 2002, though it does not specify her salary. Tax records reflect that the applicant and her husband earned a combined gross income of \$67,808 in 2005. Without economic contribution from the applicant, it is evident that the applicant's husband would have to make substantial changes to his lifestyle and housing. While such financial challenge is not deemed extreme hardship by itself, the AAO will consider it in assessing the totality of the applicant's husband's circumstances.

Based on the forgoing, the AAO finds that the applicant's husband will face extreme hardship if the applicant departs the United States and he remains. Accordingly, the applicant's husband will experience extreme hardship if the applicant's waiver application is denied. The applicant has shown that a qualifying relative would suffer extreme hardship if she is required to depart the United States.

In *Matter of [REDACTED]* 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 using a passport and U.S. visa that she obtained under her sister's name. Thus, the applicant procured a visa and admission into the United States by willfully misrepresenting a material fact (her true identity.)

The positive factors in this case include:

The applicant has significant family ties to the United States, including her U.S. citizen husband, stepdaughter, mother-in-law, father-in-law, and sisters- and brothers-in-law; the applicant's husband would suffer extreme hardship if she is compelled to depart the United States; the applicant has contributed greatly to the care, health, and well-being of her stepdaughter; the applicant's stepdaughter would suffer significant

emotional and economic hardship should the applicant depart the United States; the applicant has held stable employment for at least five years, including paying taxes, and; the record does not reflect that the applicant has committed additional immigration violations or engaged in criminal activity.

Although the applicant's engagement in misrepresentation 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 her burden that she merits approval of her application.

ORDER: The appeal is sustained.