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U.S. Citizenship
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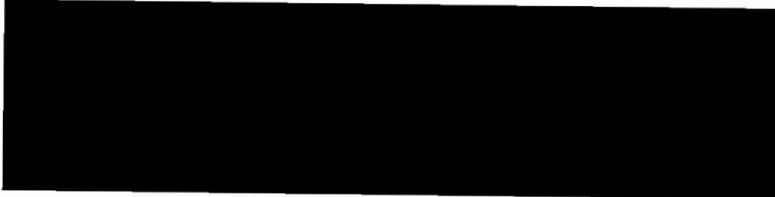
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IN RE:



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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 having entered the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and has a U.S. citizen child. She 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 her family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 28, 2005.

On appeal, counsel contends that the applicant has established extreme hardship to her spouse. Counsel also asserts that the applicant's child and her spouse's family ties should be considered in establishing extreme hardship in this case. *Counsel's brief*, dated October 26, 2005.

The record includes, but is not limited to, a brief submitted by counsel on appeal; statements from the applicant's spouse, dated July 21, 2001 and undated; a copy of the family's medical insurance cards; medical records and photographs of the applicant's child; and copies of property, financial and tax documents for the applicant and his spouse. 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 the applicant at the time of her interview for adjustment of status testified that she had used a fraudulent passport in the name of [REDACTED] to enter the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212(i).

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 an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(i) waiver proceedings, except to the extent that it results in hardship to a qualifying relative, in this case, the applicant's spouse. The only relevant hardship in the present case is hardship suffered by the applicant's husband.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals provides a list of factors relevant in determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in the Philippines or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines as all of his close family, including his adult sons from his prior marriage, reside in the United States. Counsel asserts that the applicant's spouse maintains lucrative employment in the United States and provides financial support to his two sons from his prior marriage and his 76-year-old sick mother. Counsel indicates that the applicant's spouse does not have ties to the Philippines having lived in the United States since 1987. Counsel states that, under the poor economic conditions in the Philippines, the applicant's spouse would find it very difficult to obtain a job to support and maintain his family and to pay the medical bills for himself and his son who needs extensive medical care. Counsel also states that if he relocates to the Philippines, the applicant's spouse will be at risk from terrorist groups. In support of this assertion counsel submits the section on the Philippines from the United States Department of State Country Reports on Human Rights Practices - 2004. The applicant's spouse states that his son suffers from multiple allergic conditions

and needs special medical care. He contends that both he and his son would find it difficult to relocate to the Philippines and that his son's health would be at risk. The applicant's spouse states that neither he nor his son would be able to receive their current level of health care if they relocate. The applicant's spouse also states that he suffers from gout and that, as a result, he would find it close to impossible to find a job in the Philippines that would feed him and his family.

The AAO notes that, in support of the claims made by the applicant's spouse, the record includes a June 28, 2001 letter from [REDACTED] indicting that the applicant's son has been diagnosed with multiple allergic conditions, including eczema, dermatitis and food allergies. While, as previously noted, the applicant's son is not a qualifying relative for the purposes of a 212(i) proceeding, the AAO acknowledges that his son's medical condition would place additional stress on the applicant's spouse should he relocate to the Philippines. It also observes that, in support of counsel's claims regarding security conditions in the Philippines, the U.S. Department of State, on February 13, 2008, issued a warning to U.S. citizens contemplating travel to the Philippines. The warning advises U.S. citizens that they may encounter risks to their safety and security anywhere in the Philippines. When considered in the aggregate and in light of the [REDACTED] factors previously cited, the AAO finds the evidence of record to establish that the applicant's spouse would suffer extreme hardship if he relocated to the Philippines with the applicant.

Counsel also contends that the applicant's spouse would suffer extreme hardship if he remained in the United States following the applicant's removal. Counsel submits statements from the applicant's spouse who asserts that it would be extremely difficult for him to look after his son, who needs special attention, by himself. The applicant's spouse states that in order to provide their son the care he needs, the applicant works during the day and he works a night shift. The applicant's spouse also contends that he would suffer emotionally and psychologically from the loss of his wife as he would not be able to bear the resulting sadness and the damaging effects of her absence on their son. Although as previously discussed, the applicant's son is not a qualifying relative in this proceeding, the AAO notes that the record establishes that the child suffers from multiple allergies. It further finds the record to contain letters of employment for the applicant and her spouse that support the applicant's spouse's claim regarding their alternate work schedules.

The applicant's spouse also states that he suffers from gout and that the pain from this condition is sometimes so severe that he must remain at home for days, unable to lift anything or walk. As a result, he contends that he requires the applicant's help not only to care for their son but to prepare his food, drive him to work and take him to medical appointments. The AAO notes that the record contains a letter dated October 13, 2005 from [REDACTED] of Plaza Family Medical Group, which indicates that the applicant's spouse was treated for gout on October 13, 2005. The letter, however, fails to discuss the severity of the applicant's spouse's medical condition or whether he requires assistance with his daily activities when suffering from an occurrence of gout.

On appeal, counsel also submits a psychological evaluation dated October 20, 2005 from [REDACTED] [REDACTED] Ph.D, PSY, a licensed psychologist at the Centro De Desarrollo Personal in El Monte, California. The report is based on a psychological evaluation of the applicant's spouse performed on October 7, 2005 and concludes that the current severity of the applicant's spouse's emotional state would be exacerbated by the inability to be with his family. In the doctor's opinion, as the separation would be of a prolonged nature, it would cause the applicant's spouse to develop a full Major Depressive Disorder (DSM-IV Diagnosis: 296.2),

resulting in disturbances in sleep and appetite, impairments in attention and concentration, increasing withdrawals and isolation and generalized feelings of hopelessness, loneliness and sadness. The psychologist also finds that the applicant's spouse is suffering from an Adjustment Disorder with Mixed Anxiety and Depressed Mood and notes that such symptoms can have adverse life-long consequences.

The AAO notes that the evaluation prepared by [REDACTED] follows a single interview with the applicant's spouse and would normally be of diminished value to a determination of extreme hardship. However, [REDACTED] has also relied on a series of standardized psychological tests, the Achenbach Adult Self-Report, the Beck Depression Inventory II and the Beck Anxiety Inventory, to reach her conclusions concerning the impact of the applicant's removal on her spouse. In that [REDACTED] observations are based on the results of these tests, as well as her interview with the applicant's spouse, the AAO will accept her findings for the purposes of this proceeding.

The AAO finds that, when considered in the aggregate, the preceding factors establish situation that the applicant's spouse would suffer extreme hardship if the applicant were denied admission to the United States. The suffering experienced by the applicant's spouse would surpass the hardship typically encountered in instances of separation.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 section 212(h)(1)(B) 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, "[B]alance 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 applicant's U.S. citizen spouse and child, the extreme hardship to the applicant's spouse, the passage of more than twelve years since the applicant's immigration violation and

the absence of a criminal record. The unfavorable factors in this matter are the applicant's use of a fraudulent document to enter the United States and her subsequent unlawful residence in the United States.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of 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. *See* 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.