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



**U.S. Citizenship  
and Immigration  
Services**

H12

[Redacted]

FILE:

[Redacted]

Office: CHICAGO

Date: APR 06 2009

IN RE:

[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.

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 Acting District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 having entered the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 212(i), in order to reside with her husband and child in the United States.

The acting district director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Acting District Director's Decision*, dated April 14, 2006.

On appeal, counsel argues that the acting district director failed to fully consider all of the evidence in the aggregate in determining that extreme hardship had not been met.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on May 10, 2003; a copy of the couple's child's birth certificate; a letter from [REDACTED] letters from the applicant's and [REDACTED] employers; tax and financial documents; a copy of the divorce decree for [REDACTED] prior marriage; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien.

The record shows, and the applicant admits, that she entered the United States using a fraudulent passport in October 1999. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-Moralez*, 21 I&N Dec. 296 (BIA 1996).

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. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: 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. The BIA has held:

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 Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

The record reflects that the applicant and her husband, [REDACTED] married on May 10, 2003. [REDACTED] states that he would suffer extreme hardship if his wife’s waiver application were denied because they have an eight month-old baby who needs his mother. In addition, [REDACTED] states he would suffer extreme financial hardship because the couple just bought a house together

and he could not afford to pay all of the bills alone. He further claims that it would constitute extreme hardship if he had to return to the Philippines, where he was born, because he has lived in the United States for over ten years. His father and four siblings all live in the United States and are U.S. citizens.<sup>1</sup> His extended family, including aunts, uncles, cousins, nephews, and nieces also live in the United States and are all U.S. citizens. *Letter from* [REDACTED] dated May 31, 2005.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that her husband will experience extreme hardship if her waiver application is denied.

The AAO finds that the applicant's husband would suffer extreme hardship if the applicant's waiver application were denied. Significantly, although the record shows that [REDACTED] has worked as a Certified Nursing Assistant in the past, the most recent tax document in the record shows that the applicant was the sole source of their household income in 2004. *See 2004 U.S. Individual Income Tax Return* (reporting the couple's wages as \$43,072, the amount shown on the applicant's W-2 form). The applicant, a Registered Nurse, has been employed by Saint Mary of Nazareth Hospital since February 2, 2004, and earns \$22.43 per hour. *Letter from* [REDACTED] dated May 11, 2005. The record shows that the couple's expenses consist of a mortgage payment of \$2,197 per month, annual property taxes of \$2,849, and annual homeowner's insurance of \$894. Although the record could have contained more evidence, such as information regarding [REDACTED] wages, more specific information regarding his dates of employment, as well as information regarding whether the couple pays day care expenses, it is evident from the record that [REDACTED] would be unable to pay his expenses without his wife's financial assistance.

It would also constitute extreme hardship for [REDACTED] to return to the Philippines, where he was born, to avoid the hardship of separation from his wife. [REDACTED] would need to readjust to a life in the Philippines after having lived in the United States for fourteen years, since he was twenty years old. He would be separated from his entire family including his father, two brothers, two sisters, and extended family. He may not be able to find employment in the Philippines in his field as a Certified Nursing Assistant. *Letter from* [REDACTED] *supra* (stating there are "lots of nurses" in the Philippines without the budgets to hire them). In sum, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's entry into the United States using a fraudulent passport. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including her U.S. citizen husband and son; the extreme hardship to the applicant's husband if she were refused admission; a letter from the applicant's

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<sup>1</sup> [REDACTED] mother is deceased.

employer stating that the applicant is a good worker who helps her coworkers and can always be counted on, and that it “will be a big loss to [the] hospital’ if [the applicant] leave[s], *Letter from* dated June 1, 2005; and the applicant’s lack of any criminal convictions.

The AAO finds that, although the applicant’s immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.