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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

tlz

FILE:

[REDACTED]

Office: CHICAGO, IL
(relates)

Date:

JAN 06 2009

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), and Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 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 by fraud or willful misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a legal permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to her permanent resident spouse and denied the application accordingly. *Decision of the District Director*, dated September 5, 2006.

The record contains, *inter alia*: documentation indicating the applicant and her husband were married on December 29, 1973, in the Philippines, divorced in October 1984, and re-married on January 9, 1998; a letter from the applicant; a letter from the applicant's spouse, [REDACTED]; letters of support; documentation that the applicant is a licensed practical nurse; medical documentation; a psychological evaluation; and copies of tax records and financial documents. 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 a waiver for a section 212(a)(6)(C)(i) finding of inadmissibility, as follows:

(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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record shows, and the applicant does not contest, that she entered the United States in October 1982 using a fraudulent passport. *Brief in Support of Appeal; Record of Sworn Statement*, dated April 28, 2005. On December 6, 2002, the applicant was granted advance parole, subsequently left the United States, and then re-entered the United States on May 7, 2003. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 2000 when she properly filed an Application to Register Permanent Residence or Adjust Status (Form I-485).¹ Therefore, the applicant accrued unlawful presence for over three years. She now seeks admission within ten years of her departure. Accordingly, 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, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of more than one year.

¹ The proper filing of an affirmative application for adjustment of status has been designated by the Secretary as an authorized period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II). See *Memorandum by [REDACTED] Executive Associate Commissioner, Office of Field Operations*, dated June 12, 2002.

Section 212(i) and section 212(a)(9)(B)(v) waivers are 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. Hardship the applicant herself may experience is not a permissible consideration under the statute. Once extreme hardship to a qualifying relative 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 Cervante-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 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th 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 (9th 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’s husband, [REDACTED], is a fifty-nine year old legal permanent resident who came to the United States in 1982. Mr. [REDACTED]’s parents are deceased and his two surviving siblings both live in the United States. The applicant and her husband have one son, a United States citizen, and four grandchildren, whom [REDACTED] sees daily. Mr. [REDACTED] was diagnosed with diabetes in 1981 and has had high blood pressure for more than twenty-five years. He takes medications and insulin shots for his diabetes, as well as medications to control his high

blood pressure and high cholesterol. Due to his diabetes, he has had significant problems with his vision and hearing. Mr. [REDACTED] has used hearing aids in both ears for at least ten years and, even with the hearing aids, still has difficulty with his hearing which has progressively gotten worse year after year. *Letter from [REDACTED], dated June 10, 2005; Letter from [REDACTED], undated.* [REDACTED]'s audiologist describes the condition as "a severe sensori-neural hearing loss that impedes [REDACTED]'s ability to understand words and word endings." *Letter from [REDACTED], dated June 7, 2005.* According to [REDACTED]'s audiologist, the applicant always accompanies her husband to his appointments and assists him in understanding communications with the audiologist. *Id.*

Regarding [REDACTED] vision, the record reflects that he has had surgeries on both eyes. He has lost significant vision in one of his eyes and experiences periodic pain in his right eye. *Letter from [REDACTED], supra; Letter from [REDACTED], date June 6, 2005.* He has been diagnosed with proliferative retinopathy, a hemorrhage in his left eye which impedes his vision, and "moderate dot-blot hemorrhages" in his right eye. *Letter from [REDACTED], dated May 17, 2005.* Once the hemorrhage in his left eye clears, [REDACTED] needs to undergo another surgery called panretinal photocoagulation, laser surgery done to stabilize vision and prevent future vision loss. *Id.; Health Guide A-Z, Diabetic Retinopathy.* According to an internet article in the record, proliferative retinopathy is the later and more serious stage of eye disease caused by diabetes. *Health Guide A-Z, supra.*

A psychological evaluation in the record describes [REDACTED] as "very dependent on others, especially, his wife." *Letter from [REDACTED], supra.* The psychologist concluded that due to his vision and hearing difficulties, [REDACTED] needs assistance in all areas of his medical management. *Id.* He has difficulty hearing on the phone, does not drive, and needs assistance communicating with doctors. *Id.* He also relies on his wife to prepare diabetic balanced meals for him and to assist him with medications, which he tends to forget to take. *Id.*

[REDACTED] contends his wife is his "eyes and ears," and that his biggest fear is being away from her. *Letter from [REDACTED], supra.* He describes his wife as his "savior angel." *Id.* The applicant, who is a registered nurse, states that her husband needs her because he does not understand what the doctors say and that she has to repeat everything close to his ears. *Letter from [REDACTED], dated June 10, 2005.* She also claims her husband would suffer financial hardship if she were deported, particularly because her employment provides very low-cost health insurance. *Id.*

It is evident from the record that the physical, personal, and emotional hardship that would result from the denial of a waiver of inadmissibility constitutes extreme hardship. The record shows that [REDACTED] has several serious medical problems, including high blood pressure, high cholesterol, diabetes, vision problems, and impaired hearing. He has had diabetes for almost thirty years, requiring oral medications as well as insulin injections. He has had operations in both of his eyes, has lost almost all of the vision in one of his eyes, experiences pain, and requires another eye operation. Despite using hearing aids in both ears, [REDACTED] cannot hear well enough to communicate independently, relying extensively on his wife to repeat things in his ear and respond

appropriately for him. The record indicates he relies on her to communicate effectively with his doctors, to prepare diabetic meals, to manage his medications, and to schedule his appointments.

Moreover, moving back to the Philippines with the applicant to avoid separation would be an extreme hardship for [REDACTED]. Relocating to the Philippines would disrupt the continuity of his health care and the procedures his doctors have in place to treat him. In addition, [REDACTED] requires another surgery on his eye and he would lose his health insurance if he and the applicant moved to the Philippines. Furthermore, he would need to adjust to a life in the Philippines after having lived in the United States for almost thirty years. He has no remaining immediate family members in the Philippines and would no longer be able to see his only son and grandchildren regularly, whom he is accustomed to seeing on a daily basis.

In sum, the hardship [REDACTED] would experience if his wife were refused admission is extreme, going beyond those hardships ordinarily associated with removal. The AAO therefore 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 applicant 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 factors in the present case are the applicant's fraudulent entry into the United States and her unlawful presence in the country. The favorable and mitigating factors in the present case include: the extreme hardship to the applicant's husband if she were refused admission, particularly in light of his medical problems; a U.S. citizen child; family ties in the United States; residence of a long duration in this country; the applicant and her husband's record of working and paying taxes in the United States; the existence of property ties in the United States; the applicant's history of stable employment as a nurse who "has helped a lot of patients and senior citizens . . . at different nursing home facilities for several years," *Letter from* [REDACTED] dated May 25, 2005; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violations are 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.