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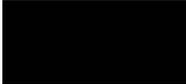
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

JAN 16 2009

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is also inadmissible 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 sections 212(h) and (i) of the Act, 8 U.S.C. § 1182(h) and (i), in order to remain in the United States and reside with his U.S. citizen wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 8, 2006.

On appeal, counsel for the applicant contends that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as his conviction qualifies as a petty offense. *Brief from Counsel*, at 2, dated October 6, 2000. Counsel further asserts that the applicant has shown that his U.S. citizen wife will experience extreme hardship if the present waiver application is denied. *Id.* at 3-5.

The record contains a brief from counsel in support of the appeal; a statement from the applicant's wife; evaluations of the applicant's wife's mental health; documentation relating to the applicant's arrests and conviction; documentation relating to the applicant's business activities; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate, and; copies of tax and wage documents for the applicant and his wife. 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.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
 -
 - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record reflects that, on December 20, 1993, the applicant pled guilty to one count of Child Molesting under California Penal Code § 647.6. The applicant was arrested in two other incidents, yet he was not prosecuted. Thus, the December 20, 1993 guilty plea constitutes the applicant's only criminal conviction. A conviction under California Penal Code § 647.6(a) carries a maximum sentence of one year in prison.¹ The applicant was not given a prison sentence, thus he "was not sentenced to a term of imprisonment in excess of 6 months." Section 212(a)(2)(A)(ii)(II) of the Act. Accordingly, the applicant meets the requirements of section 212(a)(2)(A)(ii)(II) of the Act, and he is not inadmissible for having been convicted of a crime involving moral turpitude. Accordingly, the applicant does not require a waiver of inadmissibility under section 212(h)(1)(B) of the Act.

¹ The record shows by a preponderance of the evidence that the applicant was not convicted under California Penal Code § 647.6(c)(2), which carries a maximum sentence of two years imprisonment, as he did not have a prior felony conviction. California Penal Code § 647.6(c)(2).

The record reflects that the applicant entered the United States in 1991 using a false name and passport that was not issued in his true name. Thus, the applicant entered the United States by fraud and making a willful misrepresentation of a material fact (his true identity.) 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), and he requires a waiver of inadmissibility under section 212(i) of the Act.

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 experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 wife would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel asserts that the applicant's U.S. citizen wife will experience extreme hardship if the present waiver application is denied. *Brief from Counsel* at 3-5. Counsel contends that the applicant's wife will suffer serious economic detriment should the applicant depart the United States. *Id.* at 4. Counsel explains that the applicant is a dentist who operates his own business. *Id.* Counsel states that

the applicant and his wife have built their lives and careers in the United States, including purchasing a home. *Id.* Counsel contends that relocating to the Philippines would cause the applicant's wife to lose their home, and they would lose the business that is their financial livelihood. *Id.*

Counsel states that, if the present waiver application is denied, the applicant's wife will relocate to the Philippines with the applicant to preserve family unity. *Id.* Counsel asserts that U.S. Citizenship and Immigration Services must consider conditions in the Philippines. *Id.* at 5.

The applicant's wife stated that she and the applicant were married on April 5, 1997, and they have a strong relationship. *Statement from Applicant's Wife*, dated December 8, 1998. She indicated that she and the applicant share responsibilities in their household, and they attend church each week. *Id.* at 1. She provided that she does not earn sufficient income to meet her expenses in the applicant's absence, including a mortgage, household expenses, outstanding medical and credit card bills, and payments for their financed vehicle. *Id.* She stated that she and the applicant have no where to live in the Philippines, and they would be compelled to reside with distant relatives until they could rent their own residence. *Id.* She asserted that she would have difficulty securing a job in the Philippines, as she is not licensed to work there, and she has been out of the country for a lengthy duration. *Id.* She explained that she would lose her pension benefits in the United States should she relocate to the Philippines. *Id.*

The applicant provided a letter from psychiatrist, [REDACTED] in which [REDACTED] states that the applicant's wife is under his care due to a diagnosis of Schizoaffective Disorder. *Letter from [REDACTED]* dated March 3, 2008. [REDACTED] indicated that the applicant's wife went through an episode recently requiring psychiatric hospitalization and she is gradually stabilizing, allowing her to return to work. *Id.* at 1. [REDACTED] stated that the applicant has been helpful for his wife's recovery, and without such support "her recovery would not have been anywhere as good or quick as in this case." *Id.* [REDACTED] expressed the opinion that separating the applicant from the applicant's wife would be detrimental to the applicant's wife's mental health. *Id.*

The applicant submitted an evaluation of his family from a licensed psychologist, [REDACTED]. [REDACTED] discussed the applicant's and his wife's background. *Report from [REDACTED]* at 2, dated October 6, 2006. [REDACTED] noted that the mothers of both the applicant and the applicant's wife reside in their residence, and that the applicant and his wife have two children, ages four and six. *Id.* [REDACTED] stated that the applicant and his wife receive the majority of their income and all of their benefits from the applicant's business. *Id.*

[REDACTED] explained that the applicant and his wife are concerned regarding their employment options in the Philippines, as the applicant's wife is not licensed to work as a clinical laboratory scientist, and there are fewer opportunities for dentists. *Id.* at 2. [REDACTED] further commented that the applicant and his wife speak different dialects, thus they would have difficulty residing in the same area of the Philippines. *Id.* [REDACTED] stated that the applicant and his wife are concerned regarding their children's health in the Philippines, as well as civil unrest. *Id.* [REDACTED] provided

that the applicant's wife has fear regarding acting as a single parent should she remain in the United States without the applicant. *Id.* at 4.

Upon review, the applicant has established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. The applicant provided evidence to show the state of his wife's mental health and treatment she has received. The letters from [REDACTED] show that the applicant's wife requires treatment for Schizoaffective Disorder. [REDACTED] referenced that the applicant's wife was hospitalized, and that the applicant has been helpful to her recovery. Dr. [REDACTED] referenced that the applicant's wife received treatment from another doctor prior to his services. Thus, the applicant has shown by a preponderance of the evidence that his wife has serious mental health concerns. It is reasonable that separating the applicant's wife from the applicant would exacerbate her condition with serious consequences. On this basis, the AAO finds that the applicant's wife would experience extreme hardship should the applicant depart the United States and she remain.

It is noted that counsel contends that the applicant's wife will experience serious economic hardship should the present waiver application be denied. The applicant's wife will endure a significant reduction in her household income should she remain in the United States without the applicant. The applicant's wife is a licensed clinical laboratory scientist, and the record reflects that she earned over \$48,000 in 1996. The record suggests that she presently works with the applicant's dental practice. Should the applicant depart the United States and abandon his dental practice, the applicant's wife's employment would be jeopardized. Given that she may suffer mental health complication, securing new employment may prove difficult or impossible. Accordingly, it is likely that the applicant's wife would have significant financial difficulty should she remain in the United States without the applicant.

It is noted that the report from [REDACTED] states that the applicant and his wife have two children, and that the applicant's mother and mother-in-law reside in their household. Yet, the applicant has not provided birth certificates for the referenced children, or evidence that his mother or mother-in-law reside in his household. Accordingly, the applicant has not shown that his wife would incur any additional economic hardship due to the presence of additional household members.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife would suffer extreme hardship should she remain in the United States without him.

The applicant has submitted sufficient evidence to show that his wife would endure extreme hardship should she relocate to the Philippines. The applicant's wife asserted that she will relocate to the Philippines with the applicant should the present waiver application be denied. As the applicant's wife suffers from mental health problems, it is reasonable that relocating to the Philippines and abandoning her life in the United States would create significant stress and likely exacerbate her condition. With the loss of her and the applicant's employment and livelihood, the applicant's wife may face economic challenges that limit her ability to access required mental health care.

The applicant's wife is a native and citizen of the Philippines, thus it is assumed that she is familiar with Filipino language, culture, and customs. [REDACTED] noted that the applicant's wife and the applicant speak different dialects, yet the applicant has not sufficiently shown that he and his wife would reside in a location in the Philippines where his wife would have significant difficulty adapting. Yet, as discussed above, the significant transition of relocating abroad entails unusual challenges for the applicant's wife, given her mental health status.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will experience extreme hardship if the present waiver application is denied, whether she relocates to the Philippines or whether she remains in the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility 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 was convicted of child molesting in the United States in 1993. The applicant entered the United States in 1991 by misrepresenting his true identity, in deliberate violation of U.S. immigration law and had an extended period of unauthorized presence.

The positive factors in this case include:

The applicant operates a dental practice and pays taxes in the United States; the applicant assists his U.S. citizen wife who has mental health problems; the applicant's wife would experience extreme hardship if the applicant departs the United States; the applicant owns property in the United States, and; the applicant has not been convicted of any crimes since 1993.

While the AAO acknowledges the hardship to the applicant's spouse, it finds that his conviction for child molestation to be of such a serious nature that it outweighs any hardship his spouse may experience. The application is, therefore, denied as a matter of discretion.

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 not met his burden.

ORDER: The appeal is dismissed.