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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA (SAN BERNARDINO) Date:

MAR 20 2009

IN RE: Applicant: [REDACTED]

APPLICATION: 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:
[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.

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 waiver application will be approved. The matter will be returned to the district director for continued processing.

The applicant, a native and citizen of the Philippines, was found 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 multiple crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen spouse.

The district director concluded that that the applicant had 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 July 12, 2006.

In support of the appeal, counsel submits a brief, dated September 29, 2006 and referenced exhibits. In addition, counsel submitted supplemental medical documentation relating to the applicant's spouse on May 4, 2007 and September 5, 2007. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

[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.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or

daughter of such alien . . . ¹

Regarding the applicant's ground of inadmissibility, the record reflects the commission of multiple crimes involving moral turpitude. In August 2000, the applicant was convicted of second degree Burglary, a violation of section 460(b) of the California Penal Code. The applicant was placed on probation for a period of two years and jail time of ten days was imposed. In addition, in May 2004, the applicant was convicted of Theft, a violation of section 484 of the California Penal Code. The applicant was placed on probation for a period of 18 months. As the aforementioned crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.² The applicant is eligible for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. The relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse.

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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) (remanding

¹ Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, USCIS must then assess whether to exercise discretion.

² The AAO notes that the applicant does not dispute the district director's finding that the offenses for which she was convicted constitute crimes involving moral turpitude.

to the Board of Immigration Appeals (BIA)) (“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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The applicant’s U.S. citizen spouse asserts that he will suffer extreme emotional, physical and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship they have, and that he would suffer extreme financial hardship because he accepted early retirement in January of 2006 and needs the applicant’s financial support, with respect to his living expenses and with respect to the financial obligations he has to his mother and his children from a prior marriage, by court order. *Declaration of [REDACTED]* dated April 22, 2006. The record also establishes that the applicant’s spouse was diagnosed with skin cancer in 2006, suffered a debilitating stroke in February 2007 and subsequently suffered two grand mal seizures, on July 27 and 28, 2007. Due to these serious medical conditions, the applicant’s spouse contends that he is dependent on the applicant for his day to day care, namely, to give him his medications, take his blood pressure, prepare his meals following a special diet, and take him to all his medical appointments since he is not able to drive. *Letter from [REDACTED]* dated May 4, 2007. Medical documentation to corroborate the applicant’s spouse’s medical conditions has been submitted.

Based on the documentation provided by counsel with respect to the applicant’s spouse medical conditions, the gravity and unpredictability of the symptoms associated with his conditions, the short and long-term ramifications for those afflicted, the need for those suffering from the above-referenced medical conditions to be treated by medical professionals familiar with the condition and its treatment and the financial and emotional hardship that the applicant’s spouse would encounter were his spouse to relocate abroad, the AAO concludes that the applicant’s spouse would suffer extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. A separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant’s waiver request. Based on the applicant’s spouse’s documented medical conditions, the gravity and unpredictability of the symptoms associated with his conditions, the short and long-term ramifications for those afflicted, the need to be treated, in an affordable³ and effective⁴ fashion by medical professionals familiar with his

³ The record indicates that were the applicant’s spouse to relocate abroad, his medical coverage would not be extended. *Supra* at 17.

⁴ As noted by the U.S. Department of State, in pertinent part:

Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided

medical conditions, the applicant's spouse's unfamiliarity with the country, the language and its customs⁵ and the applicant's spouse's need to remain close to his ailing mother, who lives less than 5 minutes away and suffers from severe asthma, high blood pressure and skin cancer, and dependent daughters, the AAO concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Philippines to reside with the applicant due to her inadmissibility.

Moreover, the AAO notes that the U.S. Department of State recently issued a travel warning for U.S. citizens intending to travel to the Philippines. *See Travel Warning-Philippines, U.S. Department of State*, dated January 27, 2009.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien 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 . . . 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).

by hospitals and doctors in the United States. Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full.

See Country Specific Information-Philippines, U.S. Department of State, dated February 6, 2009.

⁵ The record establishes that the applicant's spouse, born in 1952, has never visited the Philippines. *Supra* at 16.

See Matter of Mendez-Morales, 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 extreme hardship the applicant’s U.S. citizen spouse would face if the applicant were to return to the Philippines, regardless of whether he accompanied the applicant or remained in the United States, the applicant spouse’s mother’s medical conditions, the applicant’s spouse’s close relationship with his U.S. citizen daughters and their dependence on the applicant and her spouse for financial and emotional support, the applicant’s history of gainful employment as a Certified Nurse’s Assistant, letters in support provided on behalf of the applicant, community ties, payment of taxes and the passage of more than four years since the applicant’s most recent conviction for a crime of moral turpitude. The unfavorable factors in this matter are the applicant’s convictions for crimes of moral turpitude and unauthorized presence and employment in the United States.

The crimes committed by the applicant were serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall continue processing the Form I-485, Application to Register Permanent Residence or Adjust Status, on its merits.