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



U.S. Citizenship
and Immigration
Services

H2

FILE: [REDACTED] Office: LOS ANGELES, CA Date: **MAR 30 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:

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, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decisions of the district director and the AAO will be withdrawn, and the appeal will be sustained.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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and both of her parents are United States citizens. The applicant 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 spouse and parents.

The district director, in originally considering the requested waiver, denied the application due to the applicant's failure to demonstrate extreme hardship to a qualifying relative beyond that which would normally be associated with deportation from the United States.

Counsel for the applicant contended on appeal that the district director erred in not applying the more permissive standards of the pre-IIRIRA section 212(i) of the Act, as the act of fraud that gave rise to her inadmissibility occurred in 1993. Counsel asserted that the district director erred as a matter of law in finding that the applicant was inadmissible and failed to meet the burden of establishing extreme hardship to a qualifying relative.

In its decision dismissing the appeal on September 8, 2006, the AAO found that application of the current section 212(i) waiver standards is correct in the applicant's case. The AAO further concluded that the applicant had failed to establish extreme hardship to a qualifying relative.

In support of this motion to reopen, counsel for the applicant submits new evidence of hardship to the applicant's qualifying relatives, specifically relating to the worsening medical conditions of the applicant's spouse and mother. Counsel asserts that the additional evidence establishes that the applicant's qualifying relatives will suffer extreme hardship upon the applicant's departure from the United States.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant was admitted into the United States in September 1993 using a fraudulent passport and visa bearing the name of another individual. As she had committed fraud in order to obtain entry into the United States, the director correctly found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding. The issue presently before the AAO is whether, in light of the new evidence submitted on motion, the applicant has established that one or more of her qualifying relatives would suffer extreme hardship due to her inadmissibility to the United States.

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 lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or to her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. 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*, 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. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to 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).

U. S. courts have 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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In this instance, the applicant's qualifying relatives include her husband, [REDACTED], the applicant's mother, [REDACTED], and the applicant's father, [REDACTED].

In dismissing the applicant's appeal on September 8, 2006, the AAO found that the applicant had failed to establish extreme hardship to any of her qualifying relatives. With respect to her husband, the AAO found that [REDACTED] claim that he would suffer financial hardship whether he remains in the United States or relocate to the Philippines with the applicant was not substantiated by either evidence of possible financial difficulties without the applicant's presence in the United States, or evidence that he would be unable to find employment if he chooses to relocate with her to the Philippines. The AAO also found that while [REDACTED] claims to have high blood pressure and requires constant medical care to monitor his condition, the record did not include any medical documentation regarding his health. With respect to the applicant's parents, the AAO noted that that [REDACTED] claimed to have heart disease and suffers from insomnia and anxiety, and [REDACTED] claimed to have hypertension and high cholesterol, but the record lacked any official documentation regarding their medical conditions. The AAO further found that while the applicant claimed that her parents could not afford to maintain a household without the help of the applicant and her sister, there was nothing in the record to show that the applicant would not be able to contribute financially from a location outside the United States. Based on these findings, the AAO concluded that the applicant had failed to establish extreme hardship to a qualifying relative and confirmed the director's decision to deny the applicant's waiver of inadmissibility.

In the motion to reopen dated October 8, 2006, counsel for the applicant indicated that after the appeal was filed, new medical evidence regarding the applicant's qualifying relatives were made known to counsel. Notably, the applicant’s husband suffered a heart attack and an inflamed colon in September 2005, and at the time the motion was filed, was still receiving treatment for those conditions in addition to high blood pressure. In addition, at the time the motion was filed, the applicant's mother was in the hospital awaiting gallbladder surgery. New evidence submitted with the motion to reopen includes the following:

- Declaration of the applicant's husband, dated October 8, 2006.
- Declaration of the applicant's mother, dated October 6, 2006.
- Declaration of the applicant's father, dated October 8, 2006.
- Medical records of the applicant's husband regarding heart attack and inflamed colon condition.
- Medical records of the applicant's mother regarding her gall bladder condition, brain meningitis and heart arrhythmia.
- The applicant's medical records.
- Medication lists for the applicant's parents.

In his statement, [REDACTED] recounted that he had a heart attack on August 28, 2005. He indicated that he was hospitalized for ten days, and that his heart condition is currently being addressed through medication, diet and exercise. Mr. [REDACTED] stated that his hospital bill for treatment of the heart attack totaled over \$92,943, which, other than \$1,488 which he paid out of pocket, was covered by his insurance. Mr. [REDACTED] stated that he needs the applicant's help on a daily basis with monitoring his blood pressure, controlling his diet, and administering his medication for high blood pressure, high cholesterol, and inflamed colon. Mr. [REDACTED] further stated that he and the applicant are undergoing artificial insemination treatment in hope of conceiving a child. He stated that he would "suffer tremendously" if he had to relocate to the Philippines, as he would not be able to have similar medical care as he now has in the United States. He stated that he would not likely be able to find in the Philippines a job similar to the one he currently has, which provides him with health insurance and a pension plan. He stated that he would suffer more if he had to stay in the United States without the applicant; he declared that she is "instrumental to [his] health and happiness." He indicated that his parents are deceased and he is close to only one brother who lives in Las Vegas.

The new evidence includes medical records and bills, which substantiate [REDACTED] statements regarding his medical condition. The record includes, among other things: (1) a letter dated September 9, 2005 from a cardiologist who confirms that [REDACTED] was under his care "for a serious cardiovascular condition and is temporarily disabled;" (2) records documenting Mr. [REDACTED] hospital stay from August 30 through September 7, 2005 in connection with his heart attack, continuing treatment of his heart condition in June 2006, treatment of his inflamed colon in September through December 2005; and (4) insurance statements and medical bills for the period from October 2005 through July 2006.

In her statement, the applicant's mother recounted her three-month hospitalization in 2000 for meningitis, the after affects of which continue to require ongoing medication. Mrs. [REDACTED] stated that she also has been diagnosed with cardiac arrhythmia and high blood pressure, for which she is also being treated with medication. She stated that she was brought into Harbor UCLA Medical Center on

September 24, 2006 and, at the time of the declaration, remained there still pending gallstone removal surgery, which was being postponed pending stabilization of her heart condition. Medical records submitted with the motion sufficiently substantiate these statements regarding [REDACTED] medical condition. Mrs. [REDACTED] stated that she is "very stressed" by the possibility of the applicant having to go to the Philippines. She stated that while she lives with another daughter, the applicant and her sister work as a team in caring for her. Mrs. [REDACTED] stated that without the applicant's help, her other daughter cannot take care of her. Mrs. [REDACTED] indicated that with her medical problems, she needed to stay in the United States because she would not be able to afford medical care without benefits similar to her current Medi-CAL/Medicare insurance. Finally, [REDACTED] stated that aside from the applicant, all of her children and grandchildren are U.S. citizens living in the United States, and that they have no immediate family members in the Philippines. She stated that the applicant would be completely without family should she be required to return to the Philippines.

In his declaration, the applicant's father stated that he suffers from high blood pressure, high cholesterol and initial symptoms of diabetes, all of which require daily medication, daily monitoring, and a restricted diet. He stated that although he and his wife live with another daughter, she works full-time, and therefore they rely heavily on the applicant to assist them with their daily life, from performing chores to administering medication and medical monitoring procedures. He also stated that due to their various medical problems, he and his wife would not be able to afford medical care without benefits similar to the Medi-CAL/Medicare insurance they now have in the United States.

Since the motion to reopen was filed, counsel for the applicant has periodically supplemented the file with documentation of new developments relating to the medical conditions of the applicant's qualifying relatives. On January 24, 2007, counsel submitted hospital records relating to [REDACTED] hospitalization in October 2006. Those record shows that before she was discharged on November 3, 2006, [REDACTED] underwent surgery for aortic valve replacement and was subsequently prescribed drug and physical therapy. On May 14, 2007, counsel submitted further hospital records documenting [REDACTED]' hospitalization from March 12, 2007 through April 2, 2007 for gallstone removal surgery. Finally, on June 17, 2008, counsel submitted medical records documenting [REDACTED]'s hospitalization and surgery in February 2008 due to a large descending thoracic aortic aneurysm.

Upon a complete review of the evidence of record, the AAO finds that the applicant has established that her husband and parents will experience extreme hardship in the United States if the applicant is required to depart from this country.

Based on the medical records submitted, it has been established that the applicant's husband has a serious cardiovascular condition that requires frequent and extensive medical intervention. Given that he is now sixty-five years of age, has had a heart attack and has recently undergone major surgery, it is reasonable to assume that [REDACTED] will continue to experience serious medical problems. It is also evident based on the record that the applicant's husband has no close family other than the applicant, and that in addition to having strong emotional ties to her, he is dependent on her to provide daily care for him during his illness.

The record also demonstrates that the applicant's mother suffers from serious medical problems and requires frequent medical intervention and extensive daily assistance from the applicant. The applicant's father is also elderly and claims to suffer from high blood pressure, hypertension and diabetes, although the record lacks any official documentation other than a list of medications to substantiate the claims regarding his medical conditions. While the applicant's parents live with one of the applicant's siblings, they have indicated that the applicant is one of two daughters available to take responsibility for their care. It would appear that the applicant is an integral part of the care giving arrangement upon which her invalid parents rely on a daily basis.

In light of these factors, the AAO finds that the hardship the applicant's husband and parents would experience if the applicant were not permitted to remain in the United States with them would rise to the level of extreme hardship.

The record also shows that the applicant's qualifying relatives would suffer extreme hardship should they relocate to the Philippines to be with the applicant. With respect to the applicant's husband, while there is no information in the record regarding his family ties in the Philippines, he stated that he has been in the United States since 1972. Further, he claimed that he would not be able to find in the Philippines employment comparable to his job in the United States. While no evidence has been submitted to substantiate his claim regarding his employment prospects in the Philippines, his reservations are well-founded given his age and the fact that he is trained as a U.S. tax accountant. While the loss of employment, and the inability to maintain a standard of living or to pursue a chosen profession, ordinarily does not rise to the level of extreme hardship, it is significant in this instance. The applicant has submitted evidence showing the high cost of the medical care the applicant's husband received and may continue to need in order to cope with his conditions. At the present, those costs are covered by the health insurance the applicant's husband has through his employment in the United States. As he noted in his declaration, without employment in the Philippines, he would not be able to afford the medical care he needs.

By the same token, the applicant's parents would suffer considerable hardship in the Philippines given their medical needs. As they stated, both currently rely on Medi-CAL and Medicare to pay for their medical costs, and without comparable assistance in the Philippines, they would not be able to afford the medical care they need. In addition, as stated in their declarations, the applicant's parents have no family members left in the Philippines; all of their children and grandchildren are now in the United States. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1293.

Accordingly, the AAO finds that the factors of hardship to the applicant's qualifying relatives should they relocate to the Philippines, when considered in the aggregate, constitute extreme hardship.

Based on the foregoing, the AAO finds that the applicant's U.S. citizen husband and parents will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that her qualifying relatives would suffer extreme hardship if she is required to depart the United States.

In *Matter of Mendez, supra*, the BIA held 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.

The negative factors in this case consist of the fact that the applicant knowingly entered the United States with a fraudulent passport and visa and periods of unauthorized presence. The positive factors in this case include: (1) the applicant has significant family ties to the United States, including her husband, parents, siblings, and nieces and nephews; (2) the applicant's husband and parents would suffer extreme hardship if she is compelled to depart the United States; (3) the applicant had expressed remorse regarding her violation of U.S. immigration laws; (4) the applicant plays an integral role in providing daily care for her U.S. citizen husband and parents; (5) the applicant has a record of working and paying her taxes in the United States; and (6) the applicant has no criminal record.

Although the applicant's immigration violations cannot be condoned, the positive factors in this case outweigh the negative factors.

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 met her burden of showing that she merits approval of her application. Accordingly, the previous decisions of the district director and the AAO will be withdrawn, and the appeal will be sustained.

ORDER: The appeal is sustained.