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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: SANTA ANA, CALIFORNIA

Date: OCT 13 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California. 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 fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The field office 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. *See Decision of the Field Office Director*, dated May 22, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on December 18, 2000; an affidavit and a declaration from letters from physician and copies of medical records; a psychological evaluation for the applicant and her husband; an affidavit from the applicant's legal permanent resident mother, letters from physician; an affidavit from mother, letters from physician; letters of support from the applicant's church; a letter from the applicant's employer; a letter from former employer; tax documents; 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 counsel concedes, that in December 1997, the applicant used a fraudulent passport and visa under the name '██████████' to enter the United States. *Brief in Support of Appeal* at 2. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to enter the United States.

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-Morales*, 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 (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).

In this case, the applicant's husband, [REDACTED] states that he was born in the Philippines in 1953, came to the United States in 1972, and became a U.S. citizen in 1978. He contends he has never gone back to the Philippines since he arrived in the United States in 1972, completed his education in the United States, and has worked only in the United States. He states that he and his wife, the applicant, live with his mother, [REDACTED]. Mr. [REDACTED] contends his mother underwent heart bypass surgery eleven years ago, was found to have another blockage in her artery in 2005, and has hypertension, osteoarthritis, coronary artery disease, diabetes mellitus, and hyperlipidemia. According to [REDACTED] the applicant cooks and cleans for his mother, watches her diet, assists her with her medications, takes her to doctor's appointments, and assists her with all of her daily activities, including picking up items off the floor. In addition, [REDACTED] and the applicant financially support his mother. [REDACTED] states he cannot move to the Philippines with his wife because it would be very difficult for his mother to leave the United States. He contends his mother must live with him, the oldest son in the family, and that she cannot live with any of her other four children in the United States. Furthermore, [REDACTED] states that in 1998, he was diagnosed with diabetes, high blood pressure, and high cholesterol. He states he requires doctor's visits every six months and that his insurance is provided through his wife's employer. Moreover, [REDACTED] claims he and his wife have been trying to conceive a child and that the applicant is undergoing fertility treatments. In addition, [REDACTED] states he was recently laid off from his job and that his wife works as a sales representative, but recently became a Licensed Vocational Nurse. He contends it would be difficult for him and his wife to find employment in the Philippines, a very financially depressed country. [REDACTED] states he would be devastated if his wife's waiver application were denied and that he has felt extremely depressed, does not want to eat or sleep, and suffers from frequent bouts of anxiety. *Affidavit of* dated October 12, 2006; *see also Declaration of* [REDACTED], dated July 9, 2002.

A letter from [REDACTED] doctor states that [REDACTED] has uncontrolled diabetes, hypertension, and high cholesterol. Results from [REDACTED]'s echocardiogram indicate he had an "[a]bnormal EKG" and his doctor states [REDACTED] needs to undergo cardiac catheterization and continue with follow-up medical care. *Letter from* [REDACTED], dated June 15, 2007; *see also Letter from* [REDACTED], dated January 4, 2006 (indicating [REDACTED] is taking medications for diabetes, high blood pressure, and high cholesterol).

A psychological evaluation in the record states that [REDACTED] father died nine years ago and that his mother had triple bypass surgery eight years ago. The evaluation states that [REDACTED] mother has been living with the applicant and [REDACTED] for the past two years. According to the evaluation, [REDACTED] complained of depression, nervousness, insomnia, loss of interest, fatigue, and poor memory, symptoms he has never experienced before. [REDACTED] took the Minnesota Multiple Personality Inventory, a personality test, which indicated he "has some anxiety symptoms such as nervousness and anxiety." In addition, the psychologist states that [REDACTED] used to work two jobs, but now that he is married and his wife works full-time, he is able to work only one job. The psychologist concludes that [REDACTED] is mildly depressed and anxious and that if the applicant departed the United States, it would cause him extreme stress which may develop into severe depression.

Comprehensive Psychological Evaluation by

dated June 27, 2002.

The applicant's mother, [REDACTED] states that she sees the applicant every day. [REDACTED] lives with another daughter, the applicant's sister, but states that both daughters provide for her financially. [REDACTED] states that in 1997, she was diagnosed with hypertension, anxiety, and coronary artery blockage, and has been on medication ever since. She claims she suffers from severe anxiety attacks which often cause her to lose her breath. [REDACTED] contends her medical insurance is covered through Medi-Cal and states that if she moves to the Philippines with the applicant, she would lose her insurance. In addition, [REDACTED] states that she visited the Philippines in March 2005 for one month and suffered from diarrhea, fevers, sinus problems, and anxiety attacks. According to [REDACTED] she went to see a physician who told her not to return to the Philippines. [REDACTED] further states that her physician in the United States advised against leaving the United States for more than one month at a time due to her unstable heart condition. Furthermore, [REDACTED] states she has lived in the United States for the past sixteen years and that it would be very difficult for her to move to the Philippines with her daughter. *Affidavit of [REDACTED]*, dated September 25, 2006.

A letter from [REDACTED] doctor states that [REDACTED] has hypertension, hyperlipidemia, coronary artery disease, anxiety disorder, degenerative joint disease, and vascular insufficiency. [REDACTED] doctor states that [REDACTED] "is in need of constant care at home and monthly medical follow up." *Letters from [REDACTED]*, dated June 6, 2007, and August 24, 2006.

[REDACTED] mother, [REDACTED] states that she lives with [REDACTED] and his wife, the applicant. [REDACTED] states that she underwent heart bypass surgery eleven years ago, and that she currently has hypertension, osteoarthritis, coronary artery disease, diabetes mellitus, and hyperlipidemia. [REDACTED] states that the applicant cooks and cleans for her, watches her diet, makes certain she takes her medications on time, takes her to doctor's appointments, and helps her with her daily activities. [REDACTED] contends the last time she visited the Philippines was in 1971 and that she has never been back because she suffered from diarrhea and frequent vomiting during her visit. She states that it is her culture's belief that she must live with her oldest son, [REDACTED] and that she has lived in the United States for the past thirty-six years. She contends she cannot live with any of her other four children in the United States. *Affidavit of [REDACTED]* dated September 25, 2006.

Letters from [REDACTED] doctor state that [REDACTED] has hypertension, osteoarthritis, coronary artery disease, diabetes mellitus, and hyperlipidemia. [REDACTED] doctor states that [REDACTED] underwent triple bypass surgery in 1994 and contends she "is in need of constant care at home and monthly medical follow up," and "will not be able to remain safely at home without constant assistance." The doctor also notes that the applicant takes [REDACTED] to all of her medical and laboratory appointments. *Letters from [REDACTED]*, dated June 6, 2007, February 6, 2006, January 6, 2006, and June 17, 2002; *see also Letter from [REDACTED]* (stating that the applicant "was with [REDACTED] every time she had a dental appointment.").

Upon a complete review of the record evidence, the AAO finds that the applicant has established extreme hardship to a qualifying relative if his waiver application is denied.

The AAO finds that the applicant's husband and mother would suffer extreme hardship if the applicant's waiver application were denied. The record shows that [REDACTED] was laid off from his job and that aside from unemployment compensation, the family's sole source of financial support consists of the applicant's income. According to the most recent tax documents in the record, the applicant earned \$21,599 in 2005 from working two different jobs while the applicant's husband earned \$4,851. See *U.S. Individual Income Tax Return 2005*; *Letter from [REDACTED]*, undated (stating the applicant has been employed full-time since July 2000); *Statement from [REDACTED]*, undated (stating [REDACTED] was unemployed in 2005). The record indicates [REDACTED] mother, [REDACTED], lives with the applicant and her husband, and that they financially support her. In addition, the record indicates the applicant also helps to financially support her mother, [REDACTED].

In addition, the record indicates [REDACTED] has been diagnosed with and takes prescription medications for diabetes, hypertension, and high cholesterol. The record also shows he needs to undergo a cardiac catheterization. *Letter from [REDACTED]*, *supra*; *Letter from [REDACTED]*, *supra*.

Furthermore, the record shows that the applicant's mother, [REDACTED] suffers from a variety of health conditions including hypertension, hyperlipidemia, coronary artery disease, anxiety disorder, degenerative joint disease, and vascular insufficiency. According to [REDACTED] physician, [REDACTED] needs constant care. The record indicates that the applicant sees her mother every day. As [REDACTED] states in her affidavit, the applicant helps her with her daily needs, financially supports her, and provides for her in any way she can. *Letters from [REDACTED]*, *supra*; *Affidavit of [REDACTED]*, *supra*.

Moreover, the record shows that the applicant lives with her mother-in-law who also suffers from a variety of health problems including hypertension, osteoarthritis, coronary artery disease, diabetes mellitus, and hyperlipidemia, and requires constant care and assistance. The record shows the applicant takes her mother-in-law to all of her dentist, doctor, and laboratory appointments. If the applicant's waiver application were denied, the record shows that much of the responsibility of taking care of [REDACTED] mother would fall to [REDACTED] as the oldest son in the family.

It would also constitute extreme hardship for [REDACTED] and [REDACTED] to return to the Philippines, where they were both born, to avoid the hardship of separation from the applicant. [REDACTED] has lived in the United States since 1972 and his entire family has lived in the United States for more than thirty years. [REDACTED] would need to readjust to living in the Philippines, a difficult situation, particularly considering his health problems. Even assuming [REDACTED] physical health would permit him to travel to the Philippines, relocating to the Philippines would disrupt the continuity of his health care and the procedures his doctors have in place to treat him. Similarly, [REDACTED] has lived in the United States since 1980. Like [REDACTED] would also need to readjust to living in the Philippines after having lived in the United States for almost thirty years and, given her numerous health problems, would also disrupt the continuity of her health care. Based on these considerations, 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] and [REDACTED] face 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 fraud and unlawful presence in the United States. 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 lawful permanent resident mother; the extreme hardship to the applicant's husband and mother if she were refused admission; the fact that the applicant has paid taxes while working in the United States; a letter of support from the applicant's church describing the applicant as pleasant, considerate, kind, gentle, generous, very warm, and caring; and the applicant's lack of any arrests or 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.