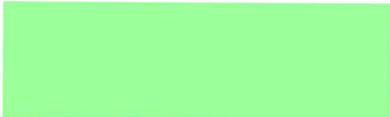


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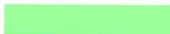


**U.S. Citizenship
and Immigration
Services**

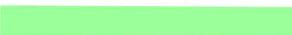


DATE: **MAR 28 2013**

Office: CHICAGO, IL

FILE: 

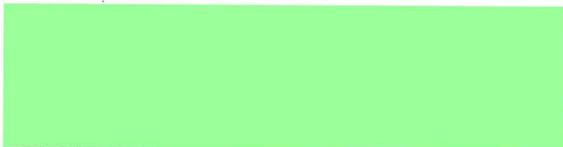
IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Philippines who was found to be inadmissible to the United States pursuant to sections 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 committed a crime involving moral turpitude, and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission by fraud or willfully representing a material fact. The applicant is the spouse of a U.S. citizen and a parent of a U.S. citizen and two lawful permanent residents. She seeks a waiver of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in conjunction with an adjustment of status application, in order to remain in the United States as a lawful permanent resident with her family.

The Field Office Director concluded that the applicant had failed to demonstrate that the bar to her admission would result in extreme hardship to her qualifying relatives, as required under section 212(h) of the Act, and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated March 5, 2010. He further denied the waiver application in the exercise of discretion.

On appeal, counsel asserts that the director's analysis of the extreme hardship factors and the discretionary considerations were flawed and should be reversed. *See Form I-290B, Notice of Appeal or Motion*, dated March 31, 2010; *Counsel's Appeal Brief*.

The record of evidence includes, but is not limited to, counsel's brief; the applicant's statement; the applicant's U.S. citizen husband's statement; extensive medical records for the applicant; character references letters from the applicant's family and friends; the applicant's and her spouse's tax returns; and the applicant's criminal records. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

(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-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other

(b)(6)

documentation and the date of application for admission to the United States, or

- (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).

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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.

The applicant asserts that she was admitted to the United States on or about July 10, 1999 on a C-1 in transit nonimmigrant visa, using the false identity of [REDACTED]. She was authorized to remain in the United States for a period not to exceed September 10, 1999. However, the applicant remained in the United States beyond the authorized period without permission. The record indicates that the applicant was arrested on December 27, 2000 and subsequently convicted on May 31, 2001 of Financial Exploitation of the Elderly in violation of section 5/16-1.3(a) of Chapter 720 of the Illinois Compiled Statutes (ILCS) for an amount more than \$5,000 but less than \$100,000. She was sentenced to 30 months of probation and ordered to pay \$12,000 in restitution. On May 2, 2003, the applicant pled guilty to violation of probation and was sentenced to 30 days imprisonment and 30 days of probation. On April 15, 2003, the applicant was convicted of Retail Theft in violation of 720 ILCS § 5/16A-3(a) and was sentenced to one year of conditional discharge.

As counsel does not dispute the findings of inadmissibility under sections 212(a)(2)(A)(i)(I) of the Act of the Act, for having been convicted of a crime involving moral turpitude, and 212(a)(6)(C)(i) of the Act, for procuring admission by misrepresentation, and the record does not show those findings of inadmissibility to be in error, the AAO will not disturb the determinations.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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

...; and

- (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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.

Sections 212(h) and (i) 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. 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, 301 (BIA 1996). The record establishes that the applicant's qualifying relatives for purposes of a 212(h) waiver are her U.S. citizen spouse, her U.S. citizen minor daughter, and her two lawful permanent resident sons. However, the applicant's children are not qualifying relatives for purposes a section 212(i) waiver. Thus, the applicant can only satisfy the hardship requirements of both statutory waivers if she demonstrates extreme hardship to her spouse.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or

inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel contends that the applicant’s husband will suffer extreme hardship if they were separated. Medical records,¹ including a December 11, 2009 letter from Dr. [REDACTED], disclose that the applicant has suffered from kidney failure, resulting in dialysis treatments and eventually a kidney transplant on April 3, 2001. She also underwent a major surgical procedure to treat cervical cancer on May 10, 2007. *See Letter from Dr. [REDACTED]*, dated November 5, 2009. The applicant also suffers from hypertension, diabetes, and hypercholesterolemia. The records indicate that the applicant’s health conditions are regularly being monitored and managed with treatment, allowing her to work on a full time basis. Dr. [REDACTED] notes, however, that the applicant may very well lose her transplanted kidney and have to return to dialysis if she fails to maintain her transplant by: having regular visits with a transplant nephrologist or surgeon; taking regular lab tests to assess kidney function and determine the levels of the ant-rejection medications in her blood; having ability to have biopsy of transplanted kidney if lab tests are abnormal; and having access to immunosuppression medications. He expresses concern that based on what the applicant has told him, that she would not have access to this type of medical care, because it is only available in the

¹ The AAO observes that the medical records are under variations of the names the applicant has used, including the false name on which she entered the United States and her former married name, [REDACTED]. Thus, the medical records identify the applicant as [REDACTED].

Philippines to those who have wealth or health insurance. The U.S. Department of State most recently reported that adequate medical care is available in major cities in the Philippines, though even the best hospitals may not meet U.S. standards. *See Bureau of Consular Affairs, U.S. Dep't of State, Country Specific Information: Philippines* (June 8, 2012). Similarly, we note that a psychosocial assessment conducted on May 5, 2000, notes that the applicant's half-sister in the Philippines at the time was being considered as a possible kidney donor and that the applicant's aunt² there was a nephrologist, who had started the work up on her sister as a possible compatible donor. Treatment plan notes from a medical visit on August 26, 1999 likewise indicate that the applicant intended to return to the Philippines to obtain the kidney transplant she required. Thus, the AAO finds that the record does not indicate that the applicant would not have access to the medical care she requires if she returned to the Philippines.

The applicant's husband asserts that he would face emotional hardship upon separation. The record indicates that the applicant and her husband have been residing together as a family with their daughter, and later, the applicant's sons, since at least 2001, through all the various medical problems the applicant has undergone. The applicant's husband expresses his deep love for his wife and the devastation her ill health has brought in the past. We recognize that the applicant's husband may face emotional distress upon being separated from his spouse and having to raise their daughter and support his wife's sons on his own. In addition, the AAO also observes that the record shows that the majority of the applicant's extended family, including her parents, sister, brother, and nephews and nieces, is now in the United States. Thus, separation would mean that the applicant would lack the extensive support system that she has in the United States in dealing with her medical conditions and any physical and medical hardships.

The applicant's husband also expresses the financial burden he would face in providing for the couple's minor daughter and his wife's two older sons. We note that although the applicant's youngest child, [REDACTED] is eleven years old, her oldest two children from a prior relationship, [REDACTED] and [REDACTED], are now 21 and 19 years old, respectively, and of an age where they are capable of assisting in their own support. However, the record contains evidence of the applicant's income and monthly expenses and bills, which show that the applicant's husband's monthly income is insufficient to cover their monthly expenses, including mortgage, utilities, the applicant's prescription costs, and insurance costs. The applicant's husband maintains that he would not be able to maintain their financial obligations, while simultaneously supporting his wife and her treatment in the Philippines.

Having carefully reviewed the evidence of record, the AAO finds that it does demonstrate that the hardship factors, demonstrate that the applicant's citizen husband would suffer extreme hardship upon separation from the applicant. Although the various factors in this case do not necessarily rise to the level of extreme hardship individually, when considered in the aggregate, we find that they constitute "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O*, 21 I&N Dec. at 385.

The AAO further finds that the record demonstrates that the applicant's husband would face hardship that, when considered in the aggregate, rises to the level of extreme hardship. We note that the record indicates that though the applicant's husband is also a native of the Philippines, he, as

² The record is not clear if the relationship is based on a biological relationship.

well as the children, would be separated from his entire family, including his parents, in laws, aunts, uncles, cousins, nieces, nephews and friends, who are all in the United States. Thus, he himself would be without a support system to assist him with his wife's ongoing medical treatment and care in the Philippines. Moreover, he would lose his property and financial ties in the United States, as well as employment benefits that cover the cost of health insurance. The applicant's husband also fears the availability of adequate medical care in the Philippines without medical insurance. He submits that he and his wife would be unlikely to find employment in the Philippines and includes an article addressing the high rate of unemployment there. He also asserts the difficulty of taking their children to a foreign country where they are separated from their family and friends and will face a language barrier and abrupt lifestyle change.

However, even if the applicant were able to satisfy the requirements of section 212(h) of the Act, the waiver may still be denied in the exercise of discretion. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Morales*, in evaluating whether relief is warranted in the exercise of discretion, the BIA stated that:

[T]he factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

Id. at 301 (internal citations omitted). The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

In the instant case, the negative discretionary factors against the applicant includes her immigration violations, including procuring her admission by fraud and remaining in the United States thereafter without authorization. Moreover, we note that the applicant continued to utilize the false identity

she used at the time of her admission in obtaining various benefits under U.S. laws, including a driver's license and medical and employment benefits. The record indicates that she continues today to use a combination of her actual identity and her false identity. The record further discloses that the applicant was convicted on May 31, 2001 of financially exploiting an elderly woman for whom she provided care. The applicant completed her 30 months of probation and asserts that she paid the \$12,000 of restitution ordered by the court, though she has not submitted evidence that the restitution has been paid off in full. We note that, the applicant expresses remorse and guilt in her statement for having stolen from an elderly woman under her care who trusted her. Significantly, while on probation for that conviction, the applicant was arrested again and convicted of retail theft on April 15, 2003. On May 2, 2003, the applicant was found guilty of violating probation on her first conviction and sentenced to 30 days of probation and 30 days imprisonment. Although she addressed remorse regarding her first conviction, the applicant does not address at all the circumstances of her second arrest and conviction for retail theft. She does, however, explain in her statement that her actions stemmed from what was going on in her life at the time, namely undergoing multiple weekly dialysis treatments without a support system in the United States, while having to work to pay her expenses and send money to the Philippines to provides support for her sons there.

The favorable discretionary factors for this applicant are the applicant's U.S. citizen husband; her lawful permanent resident sons and U.S. citizen daughter; the extreme hardship to her spouse should her waiver application be denied, as detailed above; her family, community, and employment ties in the United States; her medical condition and ongoing treatment and care; and her character reference letters from family and friends.

The AAO notes that a finding of extreme hardship carries considerable weight in the exercise of discretion and has carefully considered the extent to which the applicant's spouse's hardship mitigates the numerous negative factors in this case. The immigration and criminal violations committed by the applicant are serious in nature and cannot be condoned. As noted, however, the applicant has expressed remorse and rehabilitation, which is supported by her lack of subsequent criminal arrests since 2002. Accordingly, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for a waiver of grounds of inadmissibility under sections 212(h) and (i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.