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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: MAR 07 2014

Office: SEATTLE

FILE: [REDACTED]

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); and under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Seattle, Washington, denied the waiver application and an appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the prior decision of the AAO is withdrawn.

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)(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. He was also found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation of a material fact. He is applying for a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i) and section 212(h) of the Act, 8 U.S.C. § 1182(h), to reside in the United States with his U.S. citizen spouse and children.

The field office director concluded that the applicant had failed to establish extreme hardship to a qualifying relative. The field office director also noted that the applicant had not established that he warranted approval of his waiver application under section 212(h) of the Act in the exercise of discretion. The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated December 20, 2012.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The AAO further found that no purpose would be served in discussing whether the applicant merited a waiver under section 212(h) or as a matter of discretion. The appeal was subsequently dismissed. *Decision of the AAO*, dated August 19, 2013.

In support of the instant motion, counsel submits the following: a brief; affidavits from the applicant's family, including his wife, daughters and son-in-law; medical documentation pertaining to the applicant's spouse; information about country conditions in the Philippines; financial documentation pertaining to the applicant and his family; and real estate documents. The entire record was reviewed and considered in rendering 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 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(h) of the Act provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

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

(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.

....

(ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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.

The field office director found the applicant to be inadmissible under section 212(a)(6)(C) of the Act as a result of his having procured admission into the United States in 1991 using a passport and visa in the name of a different individual and not disclosing his prior immigration history. The applicant does not contest this finding of inadmissibility on motion. The applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation.

The field office director also found the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for his conviction for Rendering Criminal Assistance in violation of Revised Code of Washington (RCW) § 9A.76.070. The applicant does not contest this finding of inadmissibility on motion. The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can

be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). We will not reach a determination regarding the applicant's eligibility for a waiver under either subsection of 212(h) of the Act, for having been convicted of a crime involving moral turpitude, before first determining whether the applicant merits a waiver under section 212(i) of the Act, the more restrictive of the two relevant waiver provisions.

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 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. I.N.S.*, 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.

We will first consider the hardship to the applicant's U.S. citizen spouse if she were to remain in the United States while the applicant relocates abroad as a result of his inadmissibility. On appeal we determined that the lack of documentary evidence supporting the claimed hardship limited the ability of the AAO to determine the degree of hardship that the applicant's spouse would experience in the absence of her husband. The AAO recognized the applicant's spouse's difficult position; however, the hardships presented, even when considered in the aggregate, did not rise to the level of extreme hardship. *Supra* at 7-9.

On motion, counsel submits a declaration from the applicant's spouse. In the declaration, the applicant's spouse details that she was recently diagnosed with Leukemia and started treatment in late January 2013. She notes that there are days when she is okay and there are days that she is very tired. As a result, she asserts that she needs her husband's daily presence and support. She contends that although she has her daughters, they have their own lives and responsibilities and the support that she gets from her husband is very different and cannot be replaced. Further, the applicant's spouse details that although she is employed, she relies on her husband's income to make ends meet, and were he to relocate abroad, she would lose the family home. *See Declaration of Letty Ablang*, dated September 20, 2013.

In support, a letter has been provided from Dr. [REDACTED] the applicant's spouse's treating physician. He confirms that the applicant's spouse was diagnosed with Chronic Myelogenous Leukemia, a type of cancer in the blood cells, in December 2012 and will need indefinite treatment. *See Letter from [REDACTED]* dated September 5, 2013. Evidence that the applicant's spouse was recently treated in the emergency room for fainting episodes and was referred to a neurologist for further diagnosis has also been submitted. *See After Visit Instructions, [REDACTED]* dated September 2, 2013. Furthermore, documentation has been provided establishing that the applicant's daughter, [REDACTED] was recently laid off and is receiving unemployment benefits and is thus unable to assist her mother

financially should the need arise. Counsel has also submitted financial documentation establishing the family's current financial obligations and the shortfall the applicant's spouse would experience were her husband to relocate abroad. Finally, letters have been provided from the applicant's two daughters and son-in-law outlining the hardships they and their mother would experience were he to relocate abroad.

The record establishes that the applicant and her spouse have been married for almost three decades. The applicant's spouse is over sixty years old. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse will experience were the applicant to relocate abroad as a result of her inadmissibility rises to the level of extreme. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse. On motion, the AAO concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship if she remains in the United States.

On appeal, we found that considered in the aggregate, the evidence did not illustrate that the hardship to the applicant's spouse, should she relocate to the Philippines, would be beyond that normally experienced by families dealing with removal or inadmissibility. *Supra* at 10. The record establishes that the applicant's spouse has been residing in the United States for over twenty years. She has been gainfully employed by [REDACTED] since 1998. She has two adult children and a grandchild in the United States and they all live together in the same residence. A third daughter lives in Canada. Further, the record establishes that the applicant's spouse has been diagnosed with leukemia and needs ongoing treatment and care by the professionals familiar with her condition and treatment plan. Counsel has also submitted articles establishing that the applicant's spouse would not be able to receive affordable and effective medical care for her cancer in the Philippines. Finally, documentation has been provided outlining the close-knit emotional and financial relationship the applicant's spouse has with her daughters and the hardships they will all experience were their mother to relocate abroad, thereby causing the applicant's spouse hardship. Based on the applicant's spouse's extensive and long-term ties to the United States and the problematic health care conditions in the Philippines, as noted by the U.S. Department of State, the applicant has established on motion that his spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established on motion that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship for purposes of both a 212(i) waiver, for fraud or willful misrepresentation, and a 212(h) waiver, for having been convicted of a crime involving moral turpitude.

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 she 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).

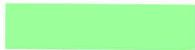
In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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, children and their respective families would face if the applicant were to relocate to the Philippines, regardless of whether they accompanied the applicant or stayed in the United States, community ties, over three decades of marriage to his wife, the applicant's long-term gainful employment in the United States, support letters from family, friends, his church and his supervisor at work and active church involvement at [REDACTED]. The unfavorable factors in this matter are the applicant's periods of unlawful presence and employment while in the United States, fraud or willful misrepresentation, two criminal convictions, one for a crime involving moral turpitude as outlined in detail above, the abandonment of his lawful permanent resident status due to long-term absence from the United States and the placement of the applicant in removal proceedings.

The violations committed by the applicant are serious in nature, but 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.

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NON-PRECEDENT DECISION

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In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion will be granted and the prior decision of the AAO dismissing the appeal will be withdrawn.