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U.S. Department of Homeland Security  
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Washington, DC 20529



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

**PUBLIC COPY**

[REDACTED]

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FILE: [REDACTED] Office: LOS ANGELES (SANTA ANA), CA

Date: **AUG 15 2006**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 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 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 in the United States with his U.S. citizen spouse, their U.S. citizen child, his U.S. citizen mother, and his lawful permanent resident father.

The District Director concluded 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 28, 2005.

On appeal, counsel contends that in the aggregate, the applicant's wife and mother would suffer extreme hardship if the applicant returned to the Philippines. Counsel also asserts that Citizenship and Immigration Services (CIS) erred in overlooking that hardship to children can constitute hardship to the qualifying spouse when deprived of the applicant's presence and support, as all the responsibility for the family's well-being falls upon the U.S. citizen spouse. *Form I-290B*, dated February 25, 2005.

In support of these assertions, counsel submits a brief dated March 29, 2005; a declaration written by the applicant's [REDACTED] dated March 25, 2005; a declaration written by the applicant's mother [REDACTED] dated March 28, 2005; an affidavit of support written by the applicant's wife's mother [REDACTED] dated July 7, 2004; a medical report of the applicant written by surgeon [REDACTED] dated July 29, 2004; a physician's progress report of the applicant written by orthopaedic surgeon [REDACTED] dated September 9, 2004. The record also contains a declaration written by the applicant's wife [REDACTED] dated October 15, 2004; a copy of a certificate of naturalization for the applicant's wife dated July 25, 2003; a letter of support from the applicant's son's teacher dated October 6, 2004; a physician's letter on behalf of the applicant from [REDACTED] dated September 30, 2004; a chart listing the monthly income and expenses for the applicant and his spouse dated October 12, 2004; a declaration written by the applicant's mother [REDACTED] dated November 4, 2004; a copy of the applicant's mother's certificate of naturalization dated September 27, 1996; a narrative medical report of the applicant's mother written by [REDACTED] dated October 22, 2004; copies of medical prescriptions for the applicant's mother; a declaration written by the applicant's father [REDACTED] dated November 4, 2004; a copy of the applicant's father's lawful permanent residency card; a physician's letter on behalf of the applicant's father written by [REDACTED] dated October 22, 2004; a record of sworn statement of the applicant dated August 9, 2004; a copy the applicant's son's U.S. birth certificate certified on May 27, 1997; copies of driver's licenses for the applicant and his wife; a copy of the applicant's employment authorization card; a copy of the photo identification page of the Philippines passport issued to the applicant; letters of employment verification and copies of pay stubs for the applicant's wife; 2003, 2001, and 2000 tax forms for the applicant and his wife; a copy of the applicant's Form I-94 card; a copy of the marriage certificate for the applicant and his wife; and a copy of the applicant's wife's resident alien card. 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.

The record reflects that the applicant presented himself for admission as a visitor to the United States on or about May 1995 at which time he made a willful misrepresentation of a material fact by presenting a passport and a B-2 visa that was issued to [REDACTED] and falsely representing himself to be that person.

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 lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife, mother and father. 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 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

Counsel asserts that a waiver should be granted because failure to do so will impose extreme hardship upon the applicant's qualifying relatives, and that the hardship to the qualifying relatives must be viewed cumulatively. *Form I-290B*. The AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that he or she resides in the Philippines or in the United States, as the qualifying relative is not required to reside outside of the United States based on denial of the applicant's waiver request.

The analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Philippines. The applicant's spouse lives with the applicant, their nine-year old U.S. citizen son, and the applicant's parents. The applicant's spouse states that she does not want to live in the Philippines, as she has strong community ties to the United States. *Declaration of the Applicant's Wife, [REDACTED] dated October 15, 2004.* With the exception of her U.S. citizen son and her in-laws, the record fails to address what types of community and/or family ties the applicant's spouse has in the United States. The AAO does acknowledge; however, that the applicant married his wife in the United States in 1996, and that the applicant's spouse has lived in the United States for many years. According to the record, the family tie that the applicant's spouse has in the Philippines is her mother. *Tab B, Declaration of the Applicant's Wife, [REDACTED] dated March 25, 2005.* The applicant's spouse is an only child of divorced parents. *Id.* The applicant's spouse would be financially impacted if she departed the United States. On May 14, 2002 the applicant sustained an injury to his spine while at his place of employment. *Tab E, Physician's Progress Report written by orthopaedic surgeon [REDACTED] dated September 9, 2004.* The applicant had surgery in April 2004 and continued to suffer severe pain. *Tab B, Declaration of the Applicant's Wife, [REDACTED] dated March 25, 2005.* On July 29, 2004 the applicant again underwent surgery to his spine. *Tab E, Medical Report written by surgeon [REDACTED] dated July 29, 2004.* As of September 9, 2004, the date of the applicant's most recent physician exam included in the record, the applicant's physical condition remained temporarily totally disabled. *Tab E, Physician's Progress Report written by orthopaedic surgeon [REDACTED] dated September 9, 2004.* As a result of his work-related injury, the applicant receives a disability income of \$1954 a month. *Declaration of the Applicant's Wife, [REDACTED] dated October 15, 2004.* The applicant's spouse earns approximately \$1000 a month after taxes. *Tab B, Declaration of the Applicant's Wife, [REDACTED] dated March 25, 2005.* If returned to the Philippines, the applicant would continue to be unable to work and would no longer receive his worker's compensation. *Id.* As a result, the applicant's spouse's income would be the main source of support for her husband and their young U.S. citizen child. The applicant's spouse stated that she has no significant assets in the United States that she could sell to ease her life in the Philippines. *Declaration of the Applicant's Wife, [REDACTED] dated October 15, 2004.* She also has no work experience in the Philippines. *Id.* She does not believe she would find any employment that would adequately provide income for herself and her family in the Philippines. *Id.* The applicant's spouse stated that the Philippine government does not provide any significant social welfare programs or job training to its people. *Id.* All of the applicant's spouse's contacts are in her hometown of Villasis Pangasinan, an underdeveloped farming village with no opportunities for non-farm work. *Id.* As such, the applicant's spouse would suffer a great financial impact if she departed the United States. Additionally, the applicant's spouse financially supports her mother in the Philippines by sending money every month to pay for her mother's medical treatment, as she suffers from a heart condition and hypertension. *Id.* The applicant's spouse's mother cannot work due to an injury to her hand and arm. *Tab B, Declaration of the Applicant's Wife, [REDACTED] dated March 25, 2005.* The applicant's spouse's mother also has trouble breathing because the artery in her heart is narrow. *Id.* The applicant's spouse's mother is fully dependent upon her daughter's support, as the applicant's spouse is an only child and her parents are divorced. *Tab D, Affidavit [REDACTED] the Applicant's Spouse's Mother; Tab B, Declaration of the Applicant's Wife, [REDACTED] dated March 25, 2005.* The applicant's spouse contends that if she were to live in the Philippines, she could no longer support her mother financially which would consequently cause her mother's health to worsen. *Declaration of the Applicant's [REDACTED] dated October 15, 2004.* The applicant's spouse would be financially impacted and she would suffer an extreme hardship if she departed the United States.

The analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the United States. The applicant's spouse would be financially impacted by remaining in the United States while the applicant resided in the Philippines. The applicant's spouse and both of her in-laws work at night. *Tab B, Declaration of the Applicant's Wife, [REDACTED] dated March 25, 2005.* Currently, the applicant has the primary responsibility of watching their son when the rest of the family is at work. *Id.* If the applicant returned to the Philippines, the applicant's spouse would have the added financial responsibility of hiring someone to care for her son while she and the rest of the family were at work. The added cost of child care for her son along with the additional expenses of supporting her disabled husband who would no longer be receiving workers compensation would financially impact the applicant's spouse, thus causing her to suffer extreme hardship.

Counsel contends that, when viewed in the aggregate, the applicant's spouse has demonstrated that she would suffer extreme hardship. *Attorney's Brief, p. 10.* Counsel asserts that the applicant's spouse would become the sole provider for a disabled husband, a disabled mother, as well as a young son, and would necessarily have to support several households on her meager salary. *Attorney's Brief, p. 12.* The health and well-being of her loved ones would be put at risk, because they would no longer have access to the necessary medications and medical care. *Attorney's Brief, p. 12.* The AAO agrees with this assertion and finds that the financial impact upon the applicant's wife as it relates to her disabled husband, disabled mother, and young child rises to the level of extreme hardship upon removal of the applicant. As the applicant has demonstrated that his spouse would suffer extreme hardship upon his removal, there is no need to analyze the facts of the other qualifying relatives.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).*

The adverse factors in the present case are the applicant's prior misrepresentation for which he now seeks a waiver, and periods of unauthorized presence and employment.

The favorable and mitigating factors are the extreme hardship to his spouse and mother if he were refused admission, his long-term and supportive relationship with his wife and nine-year-old U.S. citizen child, his positive relationships with his family as evidenced by their affidavits, and his lack of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were 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.