



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date: SEP 12 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 (the Act), 8 U.S.C. § 1182(a)(6)(C)(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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The district director denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on a motion to reconsider after a December 12, 2004 AAO decision to dismiss the appeal. Upon reconsideration, the appeal will be sustained.

The applicant, [REDACTED], is a native and citizen of the Philippines who entered the United States in 1990, using a fraudulent passport, and applied for adjustment of status on March 28, 2001. In order to remain in the United States with his U.S. citizen (USC) spouse, [REDACTED] the applicant seeks a waiver of inadmissibility 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 sought to procure admission into the United States by fraud or willful misrepresentation.

The record reflects that Mr. [REDACTED] used a fraudulent passport and visa for entry into the United States in 1990. As a result of this misrepresentation, the director found the applicant to be inadmissible to the United States. *District Director's Decision*, dated July 10, 2002. The district director also found 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). *Id.* In a December 22, 2004 decision, the AAO affirmed the district director's decision.

A review of this case arises from a motion to reconsider filed by counsel on January 20, 2005.

Along with the motion, counsel for the applicant submits a brief and documentation regarding kidney disease and country conditions in the Philippines, including the U.S. State Department "Philippines Consular Information Sheet," January 21, 2000 and a paper written by a nephrologist in the Philippines documenting the lack of medical resources in the Philippines for those with kidney disease. Counsel asserts that Mrs. [REDACTED] will suffer extreme hardship, psychologically, emotionally and financially, if her husband is not permitted to reside with her in the United States. *Brief in Support of Motion to Reconsider, not dated.*

In addition to the above mentioned brief and documentation, the record includes (1) a hardship statement from Mrs. [REDACTED] in which she describes how her life would be destroyed if her husband were denied permission to reside in the United States; (2) a statement from Mr. [REDACTED]; (3) a letter from Mrs. [REDACTED] friend of and co-worker, [REDACTED]; (4) a letter from the [REDACTED] friends [REDACTED] and [REDACTED] (5) medical records confirming that Mr. [REDACTED] suffers from polycystic kidney disease (PKD) and high blood pressure; (6) articles from the National Kidney Foundation and the Polycystic Kidney Disease Foundation, stating that the majority of those who suffer from PKD develop kidney failure, that PKD is the most common life-threatening genetic disease, and that men with high blood pressure are at an increased risk for kidney failure; (7) a deed for the house the [REDACTED] bought in 2002; (8) employment records; and (9) tax records. The AAO reviewed the record in its entirety before issuing its decision.

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 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. In examining whether extreme hardship has been established, 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).

Hardship the applicant himself experiences upon denial of his application for admission is not considered in section 212(h) waiver proceedings.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to Mr. [REDACTED] spouse must be established in the event that she accompanies her husband to live in the Philippines and, in the alternative, in the event that she remains in the United States.

The first part of the analysis requires Mr. [REDACTED] to establish extreme hardship to his wife, in the event that she moves with him to the Philippines. In this case, the record reflects that Mrs. [REDACTED] was born and raised in the United States. Her parents immigrated to the United States from Korea and stopped talking to her when she married the applicant because of cultural differences. As a result, Ms. [REDACTED] relationship with the applicant is extremely close and interdependent. See *Mrs. [REDACTED] Hardship Statement; Mr. [REDACTED] statement; and Ms. [REDACTED] letter*. Mrs. [REDACTED] works at CarePlus Management as a medical coordinator and makes \$57,000 per year. The record contains evidence that substantiate her fear of not finding gainful employment in the Philippines in general, and, as a woman, in particular,. See *Mrs. [REDACTED] Hardship Statement; Mr. [REDACTED] Statement; and the U.S. Department of State Country Reports on Human Rights Practices, Philippines 2001*. Mrs. [REDACTED]s current job provides benefits that include medical health coverage for her and Mr. [REDACTED]. This insurance would not cover Mr. [REDACTED] treatment in the Philippines. See U.S. Statement Department "Philippines Consular Information Sheet," January 21, 2000 ("Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost thousands of dollars or more. Doctors and hospitals often expect immediate cash payment for health services.") It is the insurance she gets from her job that pays for the family's medical bills. She would lose the ability to pay for her husband's treatment if she moved with him to the Philippines.

The AAO recognizes that the family would suffer economic detriment and their wage-earning potential would be diminished if they moved to the Philippines, and that the standard of living for the couple would be reduced. If they moved there, they would lose their home, Mrs. [REDACTED] would lose her job, and she would be unable to pay for Mr. [REDACTED]s medical treatment, which is prohibitively expensive for all except the wealthy in the Philippines.

It is clear that Mrs. [REDACTED] has spent her entire life in the United States and has no family in Philippines or any other significant ties in the Philippines. Mr. [REDACTED] has lived in the United States since 1990 and has spent his entire adult life here. The only family he has left in the Philippines is his grandmother and two brothers. If Mr. [REDACTED] was forced to relocate to the Philippines and his wife joined him there, they would suffer both financial and personal hardships. Mrs. [REDACTED] has never been to the Philippines. This lack of support, combined with the diminished family income likely in the Philippines and the loss of her job, home, and social ties lead to a conclusion that Mrs. [REDACTED] would indeed suffer extreme hardship if she chose to move to the Philippines to avoid separation from her husband.

The second part of the analysis requires Mr. [REDACTED] to establish extreme hardship to his wife in the event that she remains in the United States separated from him. The detailed statements from [REDACTED] and Ms. [REDACTED] reveal that Mrs. [REDACTED] is suffering in reaction to the anticipated separation from either her husband or from her livelihood and birthplace. According to Mrs. [REDACTED], due to her family's rejection of her, Mr. [REDACTED] is "all that I have left." Mrs. [REDACTED] writes that, given their mutual support for each other, separation from Mr. [REDACTED] "would be the most heartbreaking thing I ever heard of." Mrs. [REDACTED] describes how she has looked after her husband after his PKD diagnosis and how she would feel if they were separated: "I would not be able to take care of him. I would never be able to sleep peacefully knowing that he was so far away and that there would be nothing I could do if he needed me."

Her friend, Ms. [REDACTED] writes:

She worries about him (Mr. [REDACTED]) so much. Even if he is just sitting right next to her she worries. I can't fathom how she would be if he were thousands of miles away and there was nothing she would be able to do when he was sick.

Included in the record are reports about economic conditions in the Philippines, the job market, and treatment for people with kidney disease. These documents all support Mrs. [REDACTED] fears about the extreme hardship she would suffer if she stayed in the United States apart from her husband. Although Mrs. [REDACTED] is able to support herself and perhaps even pay their mortgage on her own, she would be unable to pay for Mr. [REDACTED] medical treatment in the Philippines. The record indicates that this would represent an extreme financial burden for Mrs. [REDACTED]. Equally as important as her inability to financially provide for her husband's medical care would be Mrs. [REDACTED]s inability to provide the daily emotional care she needs to provide him.

Statements and letters of support for the couple indicate the couple's strong commitment to each other and an effective partnership of sharing responsibilities in a relationship of over 6 years. The record shows that the relationship between Mrs. [REDACTED] and her husband is extremely strong and that her emotional and personal well-being is dependent on this relationship. Mrs. [REDACTED] clearly articulated that her emotional welfare is dependent on the welfare of her husband, and that she could not bear the trauma of separation from her husband or the trauma of uprooting herself from her life in the United States to a country where she would be unable to work and her husband would be unable to afford treatment for his kidney disease. Her statement, the statement of her husband, and the statement of Ms. [REDACTED] reveal a high level of anxiety that Mr. [REDACTED] is suffering and will suffer if she does not have the companionship and care of her husband and the peace of mind she gets from taking care of him, financially, physically, and emotionally.

Based on the above evidence, the applicant has established that the cumulative general emotional effect that separation from her husband would have on Mrs. [REDACTED] combined with the increased financial, personal and familial burdens that she would face, render the hardship in this case beyond that which is normally experienced in most cases of removal.

Discounting the hardship Mrs. [REDACTED] would face in either the United States or Philippines if her husband were refused admission is not appropriate. Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, the AAO finds that the applicant has established that his wife would suffer extreme hardship if his waiver of inadmissibility were denied. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 AAO must “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.” *See Matter of Mendez-Morales, supra* at 300 (BIA 1996). (Citations omitted).

The adverse factors in the present case are the applicant’s unlawful entry, for which he now seeks a waiver, and years of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to his wife if he were refused admission, his supportive relationship with his wife, and his active and positive role in the community, evidenced by letters of support in the record.

The AAO finds that, although the misrepresentation the applicant committed was 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.