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

H5

FILE: Office: LOS ANGELES (SANTA ANA) Date: APR 15 2010

IN RE:

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

ON BEHALF OF PETITIONER:

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, 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 sought to procure admission to the United States through fraud or misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

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 accordingly. *See Decision of the Field Office Director* dated July 2, 2007.

On appeal, counsel for the applicant asserts that the decision of U.S. Citizenship and Immigration Services (USCIS) denying the waiver application is arbitrary and capricious and must be reversed as an abuse of discretion. *Counsel's Brief in Support of Appeal* at 2. Counsel claims that the applicant's wife would suffer emotional and financial hardship if the applicant is removed from the United States and she were left to raise her U.S. Citizen son on her own, and further claims that she would suffer extreme hardship if she relocated to the Philippines due to economic conditions there and the emotional effects on her and her son of severing their ties to the United States. *Brief* at 4-7. In support of the appeal counsel submitted a statement from the applicant's wife, a psychological evaluation of the applicant's wife, and medical records and documentation related to a disability claim for the applicant's wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

Section 212(i) of the Act provides:

> **(1)** The [Secretary] may, in the discretion of the [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 [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 contains references to hardship the applicant's stepson would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act 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 (BIA 1996).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.* 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 Ninth Circuit Court of Appeals has held, "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) (remanding to the Board of Immigration Appeals (BIA)) ("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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court held

that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, *supra,* the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-six year-old native and citizen of the Philippines who has resided in the United States since July 9, 1997, when he was admitted as a C1crew member, and previously sought admission as a visitor for pleasure on February 25, 1997 after presenting a fraudulent passport and B2 visa under the name . He withdrew his application for admission and returned to the Philippines. The record further reflects that the applicant's wife is a thirty-eight year-old native and citizen of the United States. The applicant married his wife on March 12, 2005 and they currently reside in Whittier, California with her son.

Counsel asserts that the applicant's wife would suffer emotional and psychological hardship due to being separated from the applicant and having to raise her son on her own. The applicant's wife states that she left her son's father when the child was seven months old because he was acting irresponsibly and did not want to raise their son together in a stable home. She further states,

> There were times when I and didn't even have a place to stay. My husband, changed everything for both me and my son. s incredible emotional and psychological support have helped me a great deal to put my past behind me. He gave me the security and stability that both my son and I desperately need. *Declaration of* dated January 19, 2006.

A psychological evaluation prepared by clinical psychotherapist states that the applicant's wife was raised by her grandparents because her mother suffered from bipolar disorder, and her father left the home when she was four years old. *Psychological Evaluation of* dated July 23, 2007. According to the evaluation, the applicant's wife reports that her childhood was "both happy and sad," her mother's manic depression was very difficult for her, and she missed her mother when she would leave for periods of time without explanation. *Psychological Evaluation* at 4. The evaluation further states that the applicant's wife was sexually abused by an uncle when she was eight years old, and that her mother took action and the man was never allowed back in the house. *Id.* states that the applicant's wife reports having been depressed during high school and living with friends during the last year of high school, and further reports that she again went into a deep depression when she ended the relationship with her son's father and "sought psychotherapy to help her cope with the loss." *Psychological Evaluation* at 5.

The psychological evaluation of the applicant's wife states that she previously sought counseling when she was twenty-five years old to "deal with her mother's illness" and again went to counseling in 2001 when her son's father left. The applicant's wife indicates that she would again become depressed if the applicant left, and she states,

> If I am depressed, I couldn't be a good mother. Just like my mother was to me. My son doesn't need a depressed mother. When I left my son's father, I was so depressed. I tried to be normal for him, but I couldn't. I had to go to therapy. *Psychological Evaluation* at 7.

concludes that in light of her family history and history of abuse and depression, the applicant's wife depends heavily on the applicant for emotional support, "without which she would decompensate and fall into deep depression," with devastating consequences. *Psychological Evaluation* at 9. He further states that she suffers from Major Depressive Disorder, Recurrent, Severe, and strongly recommends that she immediately seek and actively participate in individual therapy "to treat long-held feelings of loss and abandonment" as well as a support group for individuals with relatives who are mentally ill. *Psychological Evaluation* at 11.

The psychological evaluation indicates that the applicant's wife has worked for the Los Angeles Times circulation and financial department since she was twenty-six years old, but has been on disability for eighteen months because she has carpal tunnel syndrome. The record does not contain any evidence that the applicant's wife is receiving disability benefits, but documentation submitted with the appeal indicates that she was diagnosed with carpal tunnel syndrome, cubital tunnel syndrome, and radial tunnel syndrome as well as depression due to her inability to work. *See* *Primary Treating Physician's Progress Reports* dated August 2006 to May 2007.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that his wife would experience extreme hardship if he is removed and she remains in the United States. Evidence on the record indicates that the applicant's wife has a history of depression and a family history of mental illness, and due to instability during her childhood because of her mother's mental illness and separation from her father, she relies heavily on the applicant for emotional support. The record contains a psychological evaluation of the applicant's wife stating that she suffers from recurrent major depression and recommending immediate psychotherapy. While the record does not contain specific evidence concerning any past counseling or other treatment the applicant's wife may have received, there is sufficient information to show that her emotional health has been deemed tenuous by a mental health professional and she would suffer emotional hardship beyond that which would normally be experienced by family members as a result of separation from the applicant.

The applicant has further established that if his wife relocated to the Philippines, where she has no ties and does not speak the language, she would face extreme emotional and psychological hardship. The applicant's wife has lived her entire life in the United States and has relatives including her grandparents and parents in the United States. As noted above, separation from close family members is a primary concern is assessing extreme hardship. *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998). The AAO further notes that although no documentation was submitted by counsel concerning conditions in the Philippines, the U.S. Department of State has issued a warning against travel to certain parts of the Philippines and further warns that "U.S. Citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there,

including those due to terrorism." See U.S. Department of State, Bureau of Consular Affairs, *Philippines – Country Specific Information,* updated February 6, 2009. When considered in the aggregate and in light of conditions in the Philippines, the applicant's wife would suffer emotional and psychological hardship beyond that which is normally experienced by family members as a result of removal or deportation if she relocated to the Philippines.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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 section 212(i) 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). *Matter of Mendez-Moralez,* 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 adverse factors in the present case include the applicant's attempt to procure admission to the United States by presenting a fraudulent passport and visa, and periods of unauthorized presence and employment. The favorable factors in the present case are the extreme hardship to the applicant's wife and to his stepson if he is removed from the United States; the applicant's lack of a criminal record or other immigration violations; and the applicant's family ties to the United States, including his wife and stepson.

The AAO finds that immigration violation committed by the applicant cannot be condoned. Nevertheless, the AAO finds that 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.