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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEWARK, NJ Date: JUL 06 2010

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)

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey 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 procured admission into the United States by fraud or willful misrepresentation on August 4, 1992. The applicant is married to a lawful permanent resident and has a U.S. citizen mother and two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision dated December 3, 2007, the field office director found that the applicant had failed to establish extreme hardship to her spouse as a result of her inadmissibility. The application was denied accordingly.

In an undated Notice of Appeal to the AAO (Form I-290B), counsel states that the field office director abused her discretion in denying the applicant's waiver application as compelling and substantial evidence was submitted in support of her application. He states that the field office director improperly balanced the overwhelming positive factors against the one negative factor in the applicant's case. He asks that the AAO review the matter and reverse the decision of the field office director.

The record indicates that on August 4, 1992 the applicant entered the United States in Los Angeles, California by using a fraudulent Filipino passport, U.S. nonimmigrant visitor's visa, and I-94 card under the name [REDACTED] with a birth date of October 1, 1974.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios are possible should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action to be taken is difficult, and it is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996)

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*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

The record of hardship includes: statements from the applicant, the applicant's spouse, the applicant's mother, the applicant's mother's doctor, the applicant's spouse's doctor, the applicant's daughter, and the applicant's sister; a letter from the applicant's sister's doctor; a psychological evaluation for the applicant's spouse; documentation regarding the applicant's employment in the United States and his ability to find employment in the Philippines; and country condition information regarding the Philippines.

The AAO notes that part of the hardship evidence focuses on hardship to the applicant's elderly mother who resides in Michigan with the applicant's sister. The record indicates through statements from the applicant's sister and mother that the applicant is one of thirteen children who are all U.S. citizens. The applicant's mother states that the family is very close knit and that she would suffer physically and emotionally if the applicant were removed from the United States. She states that the applicant helps her tremendous, especially with her financial needs. The AAO notes that the record indicates that the applicant's mother is living in Michigan with the applicant's sister, that the applicant resides in New Jersey, and that beyond the applicant and her sister, her mother has eleven

other children residing in the United States. Given these facts the AAO finds that hardship to the applicant's mother as a result of separation from the applicant is of diminished weight.

The AAO also notes that hardship to the applicant's sister and children has been presented in the record. In regards to the applicant's sister the record contains a hardship statement and a letter from the applicant's sister's doctor. Several statements have been made regarding the hardship the applicant's two minor children will suffer as a result of the applicant's inadmissibility. The record also includes a statement from the applicant's daughter. However, the applicant's sister and the applicant's children are not qualifying relatives under section 212(i) waiver proceedings, so hardship to them will not be considered unless it is shown that hardship to them is causing hardship to the applicant's mother and/or spouse.

Most of the hardship record focuses on the hardship that will be experienced by the applicant's spouse. In his statement dated September 27th, the applicant's spouse states that he and the applicant have been married for twenty-one years and that they have three children together. He states that the applicant cares for their children on a day-to-day basis and that they have a close relationship. He states that the emotional hardship he will face as a result of the waiver application being denied is nothing short of devastating. He states that he would then have to fill the role of mother and father in their children's lives.

In his statement the applicant's spouse also states that moving his family to the Philippines would shatter his children emotionally and culturally. He states that his children do not speak Tagalog, they would suffer from the lack of educational opportunities, and that he no longer has immediate relatives in the Philippines. He states further that their financial status would be severely impacted by relocating to the Philippines as he will not be able to find employment there due to his age. He states that he is employed in the United States in the field of information technology with HSBC Bank. He states that he has been working at this employer since May of 2007, derives a base income of \$120,000 per year, and has unlimited opportunities for advancement. He states that he is 45 years old and that the employable age in the Philippines is between 20-35 years old. Also, in regards to country conditions in the Philippines the applicant's spouse states that he fears violence, political instability, terrorism, and kidnappings. He cites to the U.S. Department of State Travel Warning which warned U.S. citizens about the risk of travel to the Philippines after the kidnapping of two U.S. citizens in front of their homes. The applicant's spouse states that he has a mortgage and a home equity loan that he would be unable to pay if he relocated. He also states that the applicant's salary helps with the household bills. The applicant's spouse asserts concerns over his health in that he suffers from hypertension and arthritis and that he fears that the stress of separation or of relocation will exacerbate his problems.

In support of these assertions the record includes classified advertisements in the Philippines showing that for job openings in the applicant's field there are age restrictions. For example, one job posting from [REDACTED] states as a qualification that the applicant be 25-35 years old. The record includes six job postings all with age requirements as part of their classifications. These age requirements do not allow for applicants older than 35 years old and in some instances not older than 27 or 28 years old. The record also includes various reports regarding

unemployment and underemployment in the Philippines as well as problems such as air pollution, violence, and kidnappings.

The AAO notes that the record includes a letter from the applicant's employer, [REDACTED] dated May 11, 2007, offering him a position as Vice President at the salary of \$120,000 per year starting on May 21, 2007.

In regards to the applicant's medical condition, the applicant's spouse submits a letter from her spouse's doctor, Dr. [REDACTED] which states that the applicant's spouse is undergoing long term treatment for hypertension and high cholesterol. Dr. [REDACTED] also states that the applicant has been treated with arthritis and with a stress related ulcer. He states that the applicant's spouse has also complained of chest pain and that he would recommend he not subject himself to stress.

Lastly, the record contains a psychological evaluation for the applicant's spouse and children completed by Dr. S [REDACTED] on October 1, 2007. Dr. [REDACTED] states that separating the applicant and her family would pose an exceptional hardship. He states that he believes the applicant's spouse has developed the symptomatology of Major Depressive Disorder, which would be exacerbated by the applicant's removal.

The AAO finds that the record in the applicant's case contains sufficient details and supporting documentation for a finding of extreme hardship to the applicant's spouse and to the applicant's mother, in part. The AAO finds that the applicant's spouse and mother would suffer extreme hardship as a result of relocating to the Philippines. The applicant's spouse would be forced to leave a good job, lose their family home, take their children out of U.S. schools, and leave their extended family in the United States to move his family to the Philippines where he would struggle to find employment, have no support from other family members, face the threat of violence and/or kidnappings, and put his children in school where they do not speak the language. In addition, the record indicates that the applicant's spouse's medical problems require that he avoid increased stress levels. Furthermore, the applicant's mother, at the age of eighty-one years old, would suffer extreme hardship as a result of relocating to the Philippines away from her twelve children and other extended family members.

The AAO also finds that the applicant's spouse will suffer extreme hardship as a result of separation. Family separation has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the type of familial relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme

hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67. The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and otherwise establish a life together, such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of familial relationship involved, the hardship resulting from family separation is based on the actual consequences of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383. Indeed, the specific facts of a case may dictate that even the separation of a spouse and children from an applicant does not constitute extreme hardship. In *Matter of Ngai*, for instance, the Board did not find extreme hardship because the claims of hardship conflicted with evidence in the record and because the applicant and his spouse had been voluntarily separated from one another for 28 years. 19 I&N Dec. at 247. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293. We also note that in this case, the applicant’s spouse faces the prospect of permanent separation from his wife.

The emotional suffering experienced by the applicant’s spouse surpasses the hardship typically encountered in instances of separation because of his reliance on the applicant in caring for their two minor children. The AAO has carefully considered the facts of this particular case and finds that the emotional hardship suffered by the applicant’s spouse rises to the level of extreme hardship. The AAO therefore concludes that the applicant has established that her spouse would suffer extreme hardship if her waiver of inadmissibility is denied.

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 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(h)(1)(B) 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, "[B]alance 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 factor in the applicant's case is her fraudulent entry into the United States. The favorable factors in the present case are the applicant's extensive family ties to the United States; extreme hardship to her U.S. citizen mother and lawful permanent resident spouse if she were to be denied a waiver of inadmissibility; the applicant's lack of a criminal record or offense; and, as indicated by affidavits from her family the applicant's attributes as a good mother, daughter and wife.

The AAO finds that the immigration violation committed by the applicant is serious in nature and 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.