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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



*H2* *H5*

FILE: [REDACTED] Office: SAN JOSE, CA Date: JUN 03 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:

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 cursive script, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Jose, 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States 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 spouse and their United States citizen children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 13, 2007.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) did not give proper weight to the hardships that would be suffered by the applicant's spouse and that she would suffer extreme hardship if the waiver application were to be denied. *Form I-290B, Notice of Appeal or Motion*.

In support of the waiver, the applicant's former and current attorneys submit briefs. The record also includes, but is not limited to, employment letters for the applicant and his spouse; tax statements for the applicant and his spouse; W-2 forms for the applicant and his spouse; earnings statements for the applicant; statements from the applicant and his spouse; a property tax statement; mortgage and mortgage interest statements; medical statements for the applicant's spouse; medical prescriptions for the applicant's spouse; police clearance letters for the applicant; bank statements; a life insurance policy; health insurance cards and a statement of coverage; medical records for the applicant's spouse and younger child; country conditions publications; psychological evaluations; W-2G forms for the applicant's spouse; a grant deed; a statement from the applicant's former landlord; publications on diabetes and Bell's Palsy; and statements from family members and friends. 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 has stated that he was admitted to the United States on January 19, 1992 on a fraudulent crewman's visa. *Record of Sworn Statement in Affidavit Form and USCIS interview notes*, dated August 29, 2002; *Form I-601, Application for Waiver of Grounds of Inadmissibility*, dated April 5, 2007. As such, he is inadmissible under Section 212(a)(6)(C)(i) of the Act for having entered the United States through fraud or the willful misrepresentation of a material fact.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his children would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in the Philippines or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in the Philippines, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of the Philippines. *Naturalization Certificate*. Counsel states that neither the applicant nor his spouse would be able to find work due to their age. *Attorney's brief*, dated October 16, 2007. While the AAO acknowledges this statement, it notes that the record fails to provide documentation regarding age discrimination in

employment practices in the Philippines. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also contends that the applicant's spouse and one of her children have health issues that will be exacerbated in the Philippines by environmental conditions. He further states that it is unlikely that either would be monitored and treated as well abroad as they are in the United States. The record demonstrates that the applicant's spouse suffers from diabetes mellitus, hypertension, dyslipidemia, and Bell's palsy. *Statement from [REDACTED] M.D.*, dated March 31, 2007. The physician who has treated the applicant's spouse since 1998 states that her conditions require regular, frequent office visits and laboratory testing. *Id.* The physician also indicates that the applicant's spouse's diabetes and hypertension have been difficult to control and that, due to fluctuations in her blood sugar, the applicant's spouse has been advised not to drive. *Id.* The record also establishes that one of the applicant's children has been repeatedly treated for respiratory problems. *Medical records for the applicant's child.*

The record fails to establish that the applicant's spouse and child would not have access to adequate health care in the Philippines. However, the AAO does find the record to demonstrate that air pollution in the Philippines is a significant problem and that Metro Manila, in particular, has heavily polluted air. The applicant and his spouse come from the city of Imus, located just outside Metro Manila. *Form G-325s, Biographic Informations, for the applicant and his spouse.* While the applicant's child is not a qualifying relative for the purposes of this case, the AAO acknowledges that taking a child with breathing problems to an area with heavy air pollution would result in added hardship for the applicant's spouse. Further, the AAO notes the applicant's spouse's own health conditions and the fact that her diabetes and hypertension have been difficult to control. In such circumstances, losing the doctor who has cared for her since 1998 and who is familiar with her medical history would add to the applicant's spouse's hardship in relocating to the Philippines. Additionally, the AAO acknowledges that any disruption in the applicant's spouse's health regimen, which requires frequent and regular monitoring, could potentially result in risk to her health. When these hardships, as well as the normal disruptions and dislocations created by relocation, are considered in the aggregate, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the Philippines.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of the Philippines. *Naturalization Certificate.* The record shows that the applicant's spouse suffers from diabetes mellitus, hypertension, dyslipidemia, and Bell's palsy. *Statement from [REDACTED] Guanzon, M.D.*, dated March 31, 2007. The physician who has treated the applicant's spouse since 1998 states that her conditions require regular, frequent office visits and laboratory testing. *Id.* The physician also indicates that the applicant's spouse's diabetes and hypertension have been difficult to control and that, due to fluctuations in her blood sugar the applicant's spouse has been advised not to drive for safety reasons. *Id.* As she does not drive, the applicant's spouse has to rely on the

applicant for all of her and her children's commuting needs. *Id.* In addition to the applicant's spouse's own health problems, the record demonstrates that one of her children has a history of respiratory problems that have required frequent doctor's visits. *Medical records for the applicant's child.* While the applicant's child is not a qualifying relative for the purposes of this case, the AAO acknowledges the added difficulties faced by the applicant's spouse in having to be the primary caregiver for a child with documented health conditions while managing her own health issues. The AAO also notes that the applicant's spouse's ability to access health care at the time of the appeal was dependent upon the applicant's employment. *See CIGNA HealthCare Enrollment/Change Form (Consolidated)*, dated March 1, 2003, *showing the applicant's spouse and children receive health insurance through the applicant's employment.* In light of her physical health and the limitations imposed by her condition, the AAO acknowledges the added difficulty the applicant's spouse would encounter in obtaining employment with health insurance for herself and her children. According to psychological evaluations included in the record, the applicant's spouse was diagnosed with Major Depressive Disorder and Anxiety Disorder in 2004, and Major Depressive Disorder with an underlying Dysthymia as well as Generalized Anxiety Disorder in 2007. *Statements from [REDACTED] MS, CRC, LMFT*, dated August 3, 2004 and April 1, 2007. The licensed healthcare professional states that the symptoms of the applicant's spouse are exacerbated by her fear that the applicant will be removed from the United States. *Id.* The AAO acknowledges the psychological conditions of the applicant's spouse as documented by a licensed healthcare professional. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

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, as well as his unauthorized employment while in the United States. The favorable and mitigating factors are his United States citizen spouse and children, the extreme hardship to his spouse if he were refused admission, the absence of a criminal record, payment of taxes and his supportive relationship with his spouse.

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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.