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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: PHOENIX, AZ Date: MAR 08 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:
[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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona 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. The applicant is married to a 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 her spouse.

The District 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 District Director*, dated August 18, 2006.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) abused its discretion and disregarded material facts in denying the waiver application. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a statement from a licensed psychotherapist; statements from friends; tax returns for the applicant and her spouse; W-2 forms for the applicant and her spouse; bank statements; homeowners' insurance policies; deeds; statements from the applicant; a statement from the applicant's spouse; statements from the applicant's spouse's children; health and dental insurance cards; a property purchase receipt; a medical letter for the applicant's spouse; state compensation insurance fund checks; a car lease; a life insurance policy; and medical records for the applicant's spouse. 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, on November 4, 1996, the applicant used a Chinese passport in an assumed name to enter the United States. *Form I-601, Application for Waiver of Ground of Excludability*. As such, she is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant would experience if the waiver request is denied is not directly relevant to the determination as to whether she 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 he resides in the Philippines or the United States, as he 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 her spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. All of his close family is in the United States, and he has no familial ties to the Philippines. *Attorney's brief*. On December 1, 1997 the applicant's spouse suffered an injury that left him disabled. *Medical records*, [REDACTED] dated August 4, 1998. His physician considers him a qualified injured worker with permanent restrictions consisting of the following: standing two hours at a time, four hours as an aggregate; and walking up one mile at a time, two hours as an aggregate. *Statement from* [REDACTED], dated August 4, 1998. He should not repetitively ascend and descend stairs or ladders. *Id.* He should not stoop, kneel, squat or bend. *Id.* In 2001, his physician described him as totally disabled due to his knee surgery and noted that he requires a cane to walk. *Statement from* [REDACTED], dated August 8, 2001. The applicant's spouse does not speak Tagalog and it would be difficult for him to communicate with doctors in the Philippines. *Attorney's brief*. While the record does not include published country conditions reports documenting the availability and adequacy of healthcare in the

Philippines, the AAO acknowledges the medical condition of the applicant's 70-year-old spouse and how his disability would exacerbate the normal hardships of relocating to a new country and culture. When looking at the aforementioned factors in the aggregate, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he 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 was born in the United States. *Birth certificate*. All of his close family is in the United States. *Attorney's brief*. On December 1, 1997 the applicant's spouse suffered an injury which left him disabled. *Medical records*, [REDACTED] dated August 4, 1998. His physician considers him a qualified injured worker with permanent restrictions consisting of the following: standing two hours at a time, four hours as an aggregate; and walking up one mile at a time, two hours as an aggregate. *Statement from* [REDACTED] dated August 4, 1998. He should not repetitively ascend and descend stairs or ladders. *Id.* He should not stoop, kneel, squat or bend. *Id.* In 2001 his physician described him as totally disabled due to his knee surgery, requires a cane to walk and thus is unable to care for himself. *Statement from* [REDACTED], dated August 8, 2001. He requires the assistance of his spouse for activities of daily living. *Id.* The applicant states that she has to attend to her spouse's personal care and accompany him to his doctors' appointments and other personal business matters. *Statement from the applicant*, dated September 22, 2000. The applicant's spouse states that his children live in California and Colorado, while his siblings reside in New Mexico. *Statement from the applicant's spouse*, dated September 22, 2000. The children of the applicant's spouse note that due to having to care for their own families and their geographic locations, they are unable to assist with the care of their father. *Statements from the applicant's spouse's children*, dated September 23, 2000. Additionally, a licensed psychotherapist has diagnosed the applicant's spouse as suffering from Depressive Disorder and Generalized Anxiety Disorder, and concludes that the applicant's spouse will quickly deteriorate without the applicant. *Statement from* [REDACTED] dated June 26, 2006. When the aforementioned factors are considered in the aggregate, the AAO finds the applicant to have demonstrated extreme hardship to her spouse if he were to reside 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 factor in the present case is the applicant's prior misrepresentation for which she now seeks a waiver. The favorable and mitigating factors are the applicant's United States citizen spouse, the extreme hardship he would suffer if her waiver request were to be denied, the applicant's payment of taxes, statements of support from friends and family, and the absence 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.