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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: CHICAGO, ILLINOIS Date: **NOV 24 2010**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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,

*Tariq Syed  
for*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois 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 his spouse and their two 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 Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 20, 2009.

On appeal, counsel for the applicant states that the applicant's spouse would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Attorney's brief*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, employment letters for the applicant and his spouse; tax statements; statements from the applicant's spouse; statements from the applicant; a warranty deed; a homeowner's insurance policy; a mortgage statement; earnings statements for the applicant and his spouse; job postings; media publications; published country conditions reports; a Travel Warning issued by the United States Department of State; medical records; a psychological evaluation; W-2 Forms for the applicant and his spouse; life insurance statements; bank statements; medical bills; medical prescriptions; car payments; a car insurance statement; loan statements; a telephone bill; a cable bill; and charity donations. 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.

The record reflects that the applicant admitted to having gained admission to the United States through the use of a fraudulent passport with a C1/D visa on December 21, 1997. *Sworn Statement*, dated April 28, 2004. Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

Section 212(i) of the Act provides, in pertinent part:

- (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 exist 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 that will be taken 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 of Immigration Appeals 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*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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).

Family separation, for instance, 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 nature of family 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 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 family relationship involved, the hardship resulting from family separation is determined based on the actual impact 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. 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.

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*. The applicant’s spouse has several family members in the United States, including her mother and brother. *Statement from the applicant’s spouse*, undated; *Attorney’s brief*. She does not maintain frequent contact with her distant relatives in the Philippines. *Statement from the applicant’s spouse*, undated. The applicant’s spouse is concerned that she and the applicant would be unable to find gainful employment in the Philippines. *Statement from the applicant’s spouse*, undated. She notes that age discrimination in the Philippines exists within the workplace and that many employers do not wish to hire someone over the age of thirty. *Id.* The applicant’s spouse is an accountant, and in support of her assertions, the record includes several job postings for employment in the Philippines in the area of accounting. *Job postings*. All of these job postings have age requirements, with the oldest age eligibility being 33 years old. *Job postings*. The record also includes published country conditions reports regarding the economy in the Philippines as well as monthly and daily poverty and food thresholds. *NSCB – Press Release, Filipino families of five living in NCR needed PhP 8,254 monthly income in 2006 to stay out of poverty*, dated June 21, 2007; *Background Note: Philippines, U.S. Department of State*, dated October 2008. Counsel also notes that although English is widely-spoken, Tagalog is spoken quite significantly in everyday life and in the schools. *Attorney’s brief*. He further states that the language skills of the applicant’s spouse have deteriorated with her more than twenty years in the United States and her children have no such language skills. *Attorney’s brief*. Regarding safety concerns, the AAO observes that the record includes a Travel Warning issued by the United States Department of State which reminds United States citizens of the risks of travel in the Philippines. *Travel Warning, Philippines, United States Department of State*, dated April 27, 2007. The Travel Warning further notes that United States citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those due to terrorism. *Id.* Counsel notes that the applicant’s spouse

and her children suffer from eczema and that their conditions would worsen in the Philippines where the climate is tropical. *Attorney's brief*. Medical documentation included in the record show that the applicant's children have suffered from eczema exacerbation and have received treatment in the United States. *Medical records*. While the record does not document that adequate treatment would be unavailable in the Philippines, the AAO acknowledges the treatment the applicant's children have received in the United States and notes that relocating to the Philippines would disrupt their care and subsequently affect the applicant's spouse, the qualifying relative in this case. When looking at the aforementioned factors, particularly the applicant's spouse's lack of close family ties in the Philippines, separation from family members in the United States, the economic situation as documented through published country conditions reports, the safety concerns for United States citizens as documented by the Travel Warning, and the health conditions of the applicant's children and consistent treatment they have received in the United States as documented by licensed healthcare professionals, 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 his spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of the Philippines. *Naturalization certificate*. The applicant's spouse has several family members in the United States, including her mother and brother. *Statement from the applicant's spouse*, undated; *Attorney's brief*. She does not maintain frequent contact with her distant relatives in the Philippines. *Statement from the applicant's spouse*, undated. According to a psychological evaluation included in the record, the applicant's spouse had suicidal thoughts in the past and these thoughts will escalate with increased stress. *Psychological evaluation by [REDACTED] LCSW, CADC*, dated July 10, 2007. Being separated from the applicant will cause her ability to function on a daily basis to decline and psychiatric hospitalization for her is likely. *Id.* She has been diagnosed as having Generalized Anxiety Disorder and her stress level is severe. *Id.* The licensed healthcare professional recommends that she attend family therapy sessions. *Id.* Counsel notes that being separated from the applicant would financially affect the applicant's spouse. *Attorney's brief*. The record includes documentation for various expenses of the applicant's spouse. *See homeowner's insurance policy; a mortgage statement, life insurance statements, car payments, a car insurance statement, loan statements, a telephone bill, a cable bill, and charity donations*. Even if the applicant were able to obtain employment in the Philippines, the AAO acknowledges the documented expenses for the applicant's spouse as well as the expenses associated in caring for two children. The applicant's spouse further notes that her mother is a senior citizen and although she would try to help as best she could, her mother does not have the extra income to assist the applicant's spouse. *Statement from the applicant's spouse*, undated. The AAO also notes that the applicant's spouse would have a difficult time visiting the applicant due to safety concerns in the Philippines as indicated by the Travel Warning issued to United States citizens. *See Travel Warning, Philippines, United States Department of State*, dated April 27, 2007. When looking at the aforementioned factors, particularly the effect a separation would have upon the psychological condition of the applicant's spouse as documented by a licensed healthcare professional, the financial impact a separation would have as documented in the record, the difficulties of being a single parent of two children, and the difficulties of traveling to the Philippines as indicated by the Travel Warning, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she 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 factors in the present case are the applicant's misrepresentation for which he now seeks a waiver and periods of unauthorized employment. The favorable and mitigating factors are his United States citizen spouse, his United States citizen children, his lack of a criminal record, the extreme hardship to his spouse if he were refused admission and his supportive relationship with his spouse and children as documented in the record.

The AAO finds that, although the immigration violations committed by the applicant are 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)(i) 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.