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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date: **OCT 07 2010**

IN RE: Applicant: [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:

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the mother of four stepchildren. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 25, 2007.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Service (USCIS) "abused its discretion in finding that the [applicant's husband] would not suffer extreme hardship if [the applicant] were to be removed from the US." *Form I-290B*, filed October 25, 2007. Additionally, counsel claims that no one can help care for the applicant's husband except the applicant, he has health insurance in the United States that cannot be used in the Philippines, and he needs the applicant's income to live. *Id.*

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant and her husband; letters of support for the applicant and her husband; medical documentation for the applicant and her husband; a psychological evaluation for the applicant's husband; letters from the applicant's and her husband's employers; bank statements, tax documents, and health insurance documents; an article on poverty in the Philippines; and a 2005 U.S. Department of State country report on the Philippines. 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, that:

- (i) In general.-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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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...

In the present case, the record indicates that the applicant procured admission to the United States on June 14, 1994 by presenting another individual's Philippine passport. Based on the applicant's misrepresentation, she is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 her stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-Moralez*, 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 (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*, 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.

The first prong of the analysis addresses hardship to the applicant’s husband if he relocates to the Philippines. In a statement dated May 5, 2006, the applicant states her husband “cannot survive in the Philippines because of his health condition, and because of his age, he will not be able to find work anymore.” In a statement dated May 5, 2006, the applicant’s husband states he suffers from diabetes, hypertension, depression, and he had an ulcer. The AAO notes that medical documentation in the record establishes that the applicant’s husband suffers from poorly controlled diabetes, hypertension, kidney issues and depression, and he has been prescribed numerous medications. The applicant’s husband claims that his “health will deteriorate if [he] move[s] back to the Philippines,” he does “not have health insurance over there,” and “health care...is not as advanced as the U.S.” The applicant states she “will not be able to afford medical insurance.” The AAO notes the applicant’s and her husband’s concerns for her husband’s medical conditions and lack of health insurance in the Philippines.

In counsel's appeal brief dated November 21, 2007, counsel states that the applicant's husband's "whole family is in the United States" including his four children and grandchildren. The applicant's husband states he "struggle[s] with the idea of leaving [his] children and grandchildren behind.... It would be impossible for [him] to do that." The AAO notes the applicant's husband's concerns regarding his children and grandchildren.

The applicant's husband states if he joined the applicant in the Philippines, they "would not have a place live, and would need to rely on [the applicant's] family to house [them]. This would be difficult since they themselves are struggling to survive." He claims that "it would also be difficult for [him] to find work since [he] [is] considered too old to find gainful employment." The AAO notes that the applicant's husband is 57 years old. The applicant states she "will not be able to get a good and stable job because of [her] age." The AAO notes that the applicant is 56 years old. She states she is very close with her sisters who reside in the United States, and they provide financial assistance to their family in the Philippines. The AAO acknowledges that the applicant and her husband might suffer some level of financial hardship in relocating to the Philippines.

The AAO notes that on April 2, 2010, the U.S. Department of State issued a travel warning to United States citizens which states that there are "continuing threats due to terrorist and insurgent activities" in the Philippines. Additionally, "[k]idnap-for-ransom gangs are active throughout the Philippines and have targeted foreigners." "The Department of State remains concerned about the continuing threat of terrorist actions and violence against U.S. citizens and interests throughout the world." The AAO notes the safety issues in the Philippines.

Based on the travel warning issued to United States citizens, the applicant's spouse's medical issues, employment issues, and the emotional hardship of being separated from his children and grandchildren, the AAO finds that the applicant's husband would suffer extreme hardship if he were to return to the Philippines to be with the applicant.

Regarding the hardship the applicant's husband would suffer if he were to remain in the United States without the applicant, the AAO notes that medical documentation in the record establishes that the applicant's husband suffers from poorly controlled diabetes, hypertension, kidney issues and depression, and he has been prescribed numerous medications. Counsel claims that the applicant "provides [her husband] with the special attention and the special care he needs." The applicant states she "make[s] sure that [her husband] always takes his medication daily and he eats the right food." She claims that her husband's children cannot help him "because they have their own families to look after." The AAO notes that the applicant's husband's children are adults with their own families. *See applicant's statement*, dated May 5, 2006.

The applicant's husband states he is suffering anxiety and stress from the possibility of being separated from the applicant. He claims that he has "a difficult time sleeping at night and find[s] [himself] depressed thinking about life without [the applicant]." Additionally, he states that if the applicant returns to the Philippines, he will "worry about [her] health." In a psychological evaluation dated February 13, 2006, [REDACTED] states the applicant's husband is suffering adjustment disorder with mixed anxiety and depressed mood. [REDACTED] also states that the applicant's

husband's "diabetes is being aggravated by his depression." In a letter dated July 17, 2007, [REDACTED] states the applicant's husband's "diabetes is still poorly controlled." [REDACTED] claims that if the applicant is separated from her husband, her husband's "depression would worsen, resulting in a diagnosis of ... Major Depressive Disorder."

Counsel claims that without the applicant's income, the applicant's husband "would have a difficult time meeting his living expenses." The applicant's husband states if he is separated from the applicant, "it will be a big loss and hardship to both of [them] financially." He claims that he would be supporting the applicant in the Philippines. The AAO finds the record to include some documentation of the applicant's and her husband's expenses in the United States.

Considering the applicant's spouse's mental health issues, medical issues, financial issues, and the normal effects of separation, the AAO finds the record to establish that the applicant's husband would face extreme hardship if he remained in the United States in her absence.

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 procurement of admission into the United States through fraud or the willful misrepresentation of a material fact and period of unauthorized stay. The favorable and mitigating factors are the applicant's United States citizen husband and stepchildren, the extreme hardship to her husband if she were refused admission, the absence of a criminal record, and the letters of support.

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. Accordingly, the appeal will be sustained.

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. The waiver application is approved.