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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

[redacted]

H5

FILE: [redacted] Office: MANILA, PHILIPPINES Date: JAN 19 2011

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Manila, Philippines, 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 a visa through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and the father of a United States citizen child. He is the derivative beneficiary of an approved Petition for Alien Worker (Form I-140). 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 United States citizen spouse and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 20, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "abused its discretion in failing to consider the total hardships and its cumulative effect on the qualifying relative," and "erred in drawing conclusions that were based upon misinterpretations and misapplications of the facts...[and] law." *Form I-290B*, filed June 18, 2008.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant and his wife; letters of support for the applicant and his wife; medical documents for the applicant's wife and daughter; a psychological evaluation for the applicant's wife; household bills, tax bills and documents, mortgage documents, and bank statements; articles on the economy and violence in the Philippines; and a consular information sheet and travel warning for 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 in 2001, the applicant obtained a nonimmigrant visa by using the name of another individual. Based on this misrepresentation, the AAO finds that the applicant 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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 spouse if she relocates to the Philippines. In a statement dated April 17, 2008, the applicant states his wife and daughter "will suffer severe hardships if they relocate to the Philippines." In counsel's brief dated July 11, 2008, counsel claims that the applicant's wife is suffering extreme hardship through her "medical problems with Lupus," "her mental health – depression," "and her stress of worrying about her daughter's health and education." In a letter dated April 15, 2008, [redacted] states he is treating the applicant's wife for lupus for which there is no cure, and "[s]he comes in every three months for routine check ups and lab work. Her kidney function must be monitored to prevent kidney inflammation which can ultimately lead to kidney failure." [redacted] indicates that the applicant's wife's lupus is in remission; however, "she has already had two episodes of exacerbation (active state) which required chemotherapy and high doses of steroids." Additionally, the AAO notes that in November 2007, the applicant's wife was

diagnosed with a left parotid mass, probable oncocytoma. The AAO notes the applicant's wife medical conditions.

In a statement dated October 12, 2007, the applicant's wife states her daughter "has a rare medical condition which causes her urine to go back to her kidney instead of passing out of her body." The applicant states his daughter "has medical problems which are better attended to in the United States;" and her "medication, treatment and check-ups are covere[d] by her U.S. health plan." In a medical report dated February 26, 2008, and state the applicant's daughter "has a history of bilateral reflux grade 3 and 4," "she underwent Deflux injection in June of 2006," and she "had a VCUG done...in January 2007, which continued to show early passive grade 1 reflux on the right side only." and indicate that as of the applicant's daughter's "last visit in May of 2007, she [had] been doing so well that [they] took her off her prophylactic antibiotics" and she has not had any urinary tract infections since her surgery. and . recommended that the applicant's daughter continue to receive renal bladder ultrasounds and if she has another urinary tract infection, they would perform a VCUG. The AAO notes the medical conditions of the applicant's daughter.

Counsel states that if the applicant's wife and daughter leave the United States, "they will lose their medical coverage. They would not be able to afford their specialized treatment without the medical insurance." The applicant states his wife "will suffer and her health will be in great danger [if] she resides in the Philippines." In a psychological evaluation dated August 6, 2007, reports that the applicant's wife cannot join the applicant in the Philippines "because there is no work for her there, and they cannot obtain the medical care they need in the Philippines." The applicant claims his wife "will have difficulty adjusting again to the Philippines" and she "will also have a hard time looking for work." The AAO notes that the record establishes that the applicant's wife is employed in a hospital as a registered nurse, and she has benefits and health insurance. The applicant states his wife's "employee related insurance pays for her medications and treatment." The AAO notes that the record establishes that the applicant's wife obtained a quote for medical insurance in the Philippines which ranges from $3,000 to $5,700 a year. The applicant states his wife has major financial obligations in the United States, including a mortgage, a car payment, insurance, credit cards, and childcare. He claims that his wife could not pay off her debts with a salary from the Philippines. Additionally, the applicant states his wife's "opportunity for career and academic advancement is huge in the United States." The AAO notes the applicant's wife's concern regarding the lack of health insurance and employment in the Philippines. Additionally, the AAO acknowledges that the applicant and his wife might suffer some level of financial hardship in relocating to the Philippines.

The applicant states his wife has some family in the United States and she has a brother in the Philippines. He also states his wife "will no longer feel safe in the Philippines" and she might "be in danger because of her citizenship." The AAO notes that on November 2, 2010, the U.S. Department of State issued a travel warning to United States citizens which warned "U.S. citizens of the risks of terrorist activity in the Philippines.... Terrorist attacks could be indiscriminate and could occur not only in the southern islands but also in other areas, to include Manila. Targeted sites may be public gathering places that are frequented by expatriates and foreign travelers, including American citizens.

Such sites could include, but are not limited to, airports, shopping malls, conference centers and other public venues." 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 and daughter's medical issues, lack of health insurance in the Philippines, disruption of the applicant's spouse's and daughter's medical treatments, and employment issues, the AAO finds that the applicant's wife would suffer extreme hardship if she were to return to the Philippines to be with the applicant.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States without the applicant, the applicant states his wife "is suffering extreme hardships because of [his] absence and inability to be with her in the United States." The applicant's wife states she needs the applicant's "physical presence [to] help [her] take care of [their] daughter, share in household responsibilities, make family decisions and share intimate moments as husband and wife." She also states that if the applicant "were here, he can take care of [her] and [her] daughter" and she "will have someone to depend on." Counsel states the applicant's wife "suffers from Lupus and depression. She must also raise her daughter, whom suffers from her own medical problems. [The applicant's wife] needs [the applicant] for emotional support." Additionally, counsel states "[g]iven [the] [a]pplicant's wife's current medical condition, she will clearly suffer, in that she will not have the companionship, emotional support, and physical presence of [the applicant] if the waiver is not granted." [redacted] states the applicant's "immigration problem is greatly affecting [the applicant's wife], manifested by inability to fall asleep and to sleep through the night, slightly elevated blood pressure, headaches, anxiety, migraines, and depression." [redacted] indicates that the applicant's wife takes medication for her blood pressure and insomnia. [redacted] states he believes the applicant's "immigration problems are compromising [the applicant's wife's] health that could lead to her lupus [becoming] active once again." [redacted] diagnosed the applicant's wife with major depression, generalized anxiety disorder, and adjustment disorder with mixed emotional features. The applicant's wife states her daughter is "affected emotionally by [the applicant's] absence." [redacted] diagnosed the applicant's daughter with overanxious disorder of childhood, oppositional defiant disorder, and adjustment disorder with anxiety.

Counsel states the applicant's wife "faces the emotional task of being a single parent." [redacted] reports that the applicant's wife "feels overwhelmed with the responsibility of caring for her daughter by herself and with the financial burden of providing for her family's needs with only one income." The applicant states his wife "is very, very stressed because of the huge bills she pays every month" and his presence in the United States "will relieve...her of severe financial hardships." The applicant's wife states if the applicant were in the United States, they would "be a two income family." The AAO notes that the record establishes that in 2005, the applicant's wife claimed $56,504 in income, and in 2006, she claimed $109,212 in income. Additionally, the AAO notes that [redacted] reports that the applicant's wife's parents reside with her, they help with childcare, and her father helps with household expenses.

Considering the applicant's spouse's mental health issues, medical issues, financial issues, and the normal effects of permanent separation of a loved one, the AAO finds the record to establish that the applicant's wife would face extreme hardship if she remained in the United States in his 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 factor in the present case is the applicant's procurement of a nonimmigrant visa through fraud or the willful misrepresentation of a material fact. The favorable and mitigating factors are the applicant's lawful permanent resident wife and daughter, the extreme hardship to his wife if he were refused admission, 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(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.