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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

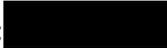
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DATE: NOV 03 2011

OFFICE: PHILADELPHIA, PA

FILE: 

IN RE: Applicant: 

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

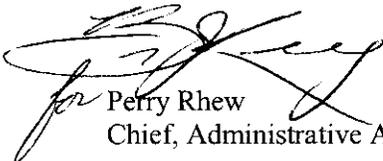
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

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 having gained entry into the United States by fraud or willfully misrepresenting a material fact. The applicant is the spouse of a United States citizen and 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.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 30, 2009.

On appeal, counsel asserts that the applicant has established that extreme hardship would result to her spouse. *See Notice of Appeal or Motion (Form I-290B)*.

The record includes, but is not limited to, statements from the applicant's spouse, describing the hardships claimed; a statement from the applicant; statements from the applicant's mother-in-law, sister-in-law, and friends; medical records pertaining to the applicant's child; an employment letter for the applicant's spouse; financial documentation, including a 2007 income tax return, a 2007 W-2, Wage and Tax Statement; and a Form 1098, mortgage interest statement; and counsel's brief and attachments. 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).

The record reflects that on or about December 15, 2001 the applicant presented a passport and visa issued to another individual to gain entry into the United States. The applicant does not dispute this finding. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having gained entry into the United States by willfully misrepresenting a material fact.

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

(i) (1) The Attorney General [now the Secretary of Homeland Security] may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members 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).

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec.

880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel asserts that the applicant’s spouse will suffer emotional and financial hardship due to separation. He states that the applicant and her spouse have a six-year old (now eight-year old) daughter who has had a severe seizure disorder since birth and requires constant attention, care and medicine.¹ Counsel asserts that the applicant’s daughter is suffering from almost daily seizures that raise her temperature, cause fevers, result in serious infections and make her more susceptible to illnesses. He also states that she must be given antibiotics every eight hours and that each seizure episode damages her brain cells. Counsel reports that at the onset of a seizure episode, the applicant and her spouse soak their daughter in a bath, rub her with alcohol and give her Tylenol. He contends that the applicant’s spouse is the only one working and that the applicant stays home and cares for their child. Counsel also contends that the applicant’s spouse would not be able to care for his daughter financially and emotionally by himself and that the family would be ruined. He further states that the applicant’s spouse would not be able to find childcare providers who would be willing to deal with his child’s medical issues. Counsel finally contends that the applicant’s spouse would

¹ It is noted that the record does not include a birth certificate for the applicant’s daughter to establish the relationship.

be under severe emotional stress seeing his daughter grow up without her mother, the most important influence in her life.

The applicant's spouse asserts that he needs the applicant for emotional support and to care for their daughter. He states that his daughter requires constant supervision due to her seizure condition and that the applicant takes care of her while he works to provide for the family. He reports that he and the applicant are getting better at catching their daughter's seizures before they take hold but cannot predict when they are going to happen. The applicant's spouse states that the applicant is the only one who is familiar with their daughter's condition and knows how to respond to her seizures. He also states that even if he took a second job to pay for childcare he would not get a provider who would be willing to take care for his child because of her frequent seizures. The applicant's spouse also states that he is concerned that without her mother his daughter would suffer psychological damage.

The record of evidence establishes the applicant's child suffers from seizures. The record includes patient notes from [REDACTED] which indicate that the applicant's child had been diagnosed with a seizure disorder. It is not clear from the medical documentation when the applicant's child's seizure condition was first discovered. However, the patient notes indicate that on March 24, 2006 and in April 2006 the applicant's child was treated for seizures and in July 2008 was referred to a neurologist. The medical record also indicates that the applicant's daughter has been treated for various conditions, including Bronchitis in September 2006 and in November 2006; pneumonia in April 2007; fever in August 2008, and for upper respiratory infections in 2005, 2006, 2007 and 2008.

The record demonstrates that in the applicant's absence, her spouse would be the caregiver and breadwinner for his young child. It also establishes that the applicant's child has a serious medical condition which requires considerable monitoring and care. When the AAO considers the significant additional burden that caring for a child with a serious health problem would place on the applicant's spouse and the hardships normally created by the separation of a family in the aggregate, we find the record to establish that the applicant's spouse would experience extreme hardship if she is removed from the United States.

With respect to relocation, counsel asserts that the applicant's spouse would experience hardship in the Philippines because he does not speak the language or know anyone in the Philippines. Counsel also contends that the applicant's spouse currently has medical providers for his daughter in whom he has trust and would suffer emotionally trying to find adequate medical care for his daughter in the Philippines. Counsel further contends that the applicant's spouse would be harmed financially if he left his steady employment in the United States and had to start over in a country where he does not speak the language. The applicant's spouse states that he would not be able to accompany the applicant to the Philippines because he does not speak the language. He also states that he does not want his daughter to relocate to the Philippines as she is accustomed to life in the United States and there are more opportunities for her here. The applicant's spouse contends that the applicant's

removal would turn the entire family's lives upside down and they would suffer financially, psychologically, and emotionally.

We note the emotional impact on the applicant's spouse of relocating to the Philippines with a child who has a serious medical condition. While the record does not establish that the applicant's daughter's medical problems could not be treated in the Philippines, we take note of the emotional impact on the spouse of removing his daughter from the care of doctors he has come to trust and who are familiar with his daughter's medical history and taking her to the Philippines where he is unfamiliar with the healthcare system. We also note that the applicant's spouse would lose his long-term employment and would have to adjust to an unfamiliar culture.

It has thus been established that the applicant's spouse would suffer extreme hardship if he relocates abroad to reside with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her United States citizen spouse would suffer extreme hardship if she is unable to reside in the United States. Moreover, it has been established that the applicant's spouse would suffer extreme hardship if he relocates abroad to reside with the applicant. Accordingly, the AAO finds that the applicant has established extreme hardship to a qualifying relative and is statutorily eligible for a waiver of inadmissibility under section 212(i) of the Act.

The grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General (now Secretary) and pursuant to such terms, conditions and procedures as she may by regulations prescribe.

The favorable factors in this matter are the applicant's United States citizen spouse and U.S. citizen child; the extreme hardship her spouse would face if the waiver application is denied; her child's serious medical condition and her attributes as a good wife and mother as indicated in the submitted statements from her friends and relatives. The unfavorable factors in this matter are the applicant's entry to the United States by willful misrepresentation and her period of unlawful residence.

While the applicant's immigration violations were serious and the AAO does not condone them, we find the mitigating factors in the present case to outweigh the negative. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.