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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



H5

DATE: OCT 13 2011 Office: LOS ANGELES, CA

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 District Director, Los Angeles, California. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen the AAO decision, which is now before the AAO. The motion will be granted and the appeal will be sustained.

The applicant is a native and a citizen of Philippines who used a Philippines passport not lawfully issued to him to enter the United States in December, 1992. The applicant 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). He is the son of a lawful permanent resident (LPR), spouse of a U.S. citizen and father of two U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse or his LPR mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service January 2, 2009. The applicant appealed the District Director's Decision to the AAO. The AAO found that neither the applicant's mother nor his spouse would experience extreme hardship as a result of the applicant's inadmissibility to the United States. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant asserts that the additional hardships have come to light since the applicant's initial interview and attaches additional documentation as evidence of such hardships. *Form I-290B, Notice of Appeal or Motion*, received February 2, 2009.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this case, counsel asserts on motion that the applicant's spouse has been diagnosed with degenerative disc disease, that the applicant and his spouse have had a second child and that they have purchased a home since the time of their first interview. Counsel also states that hardship to the applicant's mother should be considered. The motion includes additional documentation, including updated medical records for the applicant's mother and spouse, affidavits and a mortgage statement. The Motion to Reopen meets the requirements stated in 8 C.F.R. § 103.5(a)(2) and the AAO will now evaluate the merits of the applicant's motion.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant presented a photo-substituted passport to enter the United States in December 1992, and thus entered the United States by materially misrepresenting his identity and eligibility for admission to the U.S.. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.<sup>1</sup>

The record contains briefs from counsel; birth certificates for the applicant and his children; a copy of the applicant's mother's permanent resident card; medical documentation for the applicant's mother; statements from the applicant's spouse and mother; a psychological evaluation of the applicant's spouse; medical documentation for the applicant's spouse; country conditions materials on the Philippines; and documents relating to the applicant's criminal record.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General 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 the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and mother are the qualifying relatives in this case. If extreme hardship to a qualifying relative is

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<sup>1</sup> It is noted that the applicant was convicted of one misdemeanor count of Forging an Official Seal, section 472 of the California Penal Code. Forgery and fraud have been found to be crimes involving moral turpitude (CIMT). *Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980) *Burr v. INS*, 350 F.2d 87, 91 (9<sup>th</sup> Cir. 1965), *cert denied*, 383 U.S. 915 (1966). Pursuant to section 212(a)(2)(A)(i)(I) of the Act, an alien who has been convicted of a CIMT is inadmissible. However, an exception to inadmissibility exists (the "petty offense" exception) where the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii) of the Act. Here, the maximum penalty for a conviction under CPC § 472 is one year imprisonment, and the applicant was sentenced to two years probation. As the applicant was not imprisoned in excess of six months and the maximum sentence for his crime did not exceed one year, the applicant's conviction falls under the petty offense exception proscribed at section 212(a)(2)(A)(ii)(II). Therefore, he is not inadmissible under section 212(a)(2)(A) and the AAO will examine his waiver application under section 212(i).

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

speaking 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.

Counsel for the applicant asserts that the applicant's spouse will experience physical, medical and financial hardship due to the applicant's inadmissibility. *Statement in Support of Form I-601*, November 19, 2004. Counsel also asserts that the applicant's mother has several medical conditions and depends on the applicant physically and financially. *Id.* Counsel asserts that the applicant's spouse has a serious case of eczema and that the conditions in the Philippines exacerbates her condition. He states that the applicant's spouse would get better treatment for her condition in the United States, and that she would not be able to find commensurate employment and medical coverage in the Philippines. Counsel asserts that the applicant's mother would be unable to relocate to the Philippines because of her age and medical conditions.

The applicant's spouse submitted a statement discussing the impacts asserted by counsel. *Statement of the Applicant's Spouse*, November 18, 2004. She states that she suffers from eczema and that when she visited the Philippines several years ago her condition was greatly exacerbated and she had to visit a doctor for medication. She also asserts that she does not have a license to practice her profession in the Philippines, that she would have problems finding commensurate employment in the Philippines and that she and her children would not have medical care and could not attend private schools.

The record includes country conditions materials, background materials on eczema, and a single medical record which discusses the applicant's spouse's eczema. Although counsel has characterized the applicant's spouse's eczema as severe, the record only contains a single medical record, dated July 26, 2001, discussing the condition. The document is an internal record from a doctor's office and states that the applicant's spouse has a history of eczema which has been treated with cortizone, indicating that she was experiencing symptoms on one of her fingers and on her feet. The document advises that she not come in contact with chemicals.

While the document submitted indicates that the applicant's spouse was treated in 2001 for an episode of eczema on her hands and feet, there is insufficient evidence to support counsel's characterizations of her condition as severe. There are no medical documents or other materials advising the applicant's spouse to avoid the Philippines because of the conditions there, nothing which establishes or corroborates the frequency or severity of her condition and nothing which indicates the impact the condition has on her ability to function on a daily basis. There is also no documentation which indicates that the applicant's spouse could not receive treatment for her

condition in the Philippines or that she is still experiencing bouts of eczema. The record does not contain sufficient evidence to establish that the applicant's skin condition creates a significant hardship factor.

The general country conditions materials submitted are insufficient to establish that the applicant's spouse would be unable to find employment in the Philippines. Nor are these materials, which discuss conditions on a national level, sufficiently probative to establish that the applicant's mother would be unable to relocate to the Philippines due to her age. The record contains insufficient documentation which relates to the assertions that the applicant's spouse would be unable to find employment.

The AAO also takes note of the mortgage statement submitted on motion, indicating that the applicant and her spouse, despite knowing that the applicant's waiver application was denied, purchased a home. Although having to relocate would mean selling this home, the AAO does not find this to be an uncommon impact upon relocation.

The AAO also takes note of the medical record submitted on appeal which indicates that the applicant's spouse is suffering from degenerative disc disease, and may eventually need surgery to reduce the pain associated with the condition. The record does not indicate that she would be unable to receive any medical treatment for this condition in the Philippines, nor does it discuss whether or not her condition is treatable with medications and the extent to which it currently affects her ability to function on a daily basis. Nonetheless, the AAO consider the impact on the applicant's spouse from having to break her continuity of care in order to relocate.

With regard to the hardship impacts on the applicant's spouse upon relocation, the AAO does not find the record to contain sufficient evidence to establish that the applicant's spouse would experience extreme hardship. Although the applicant's spouse has two medical conditions, the evidence submitted does not establish the degree of their severity or what impact they have on her ability to function on a daily basis. Nor is there evidence that she would be unable to receive treatment for these conditions in the Philippines. The AAO also notes that the applicant would be present to assist her with parental duties, unlike the impact upon separation where he would not be present to assist her. Based on these observations, the impacts on her, even when considered in the aggregate, do not rise to the level of extreme.

With regard to the impacts of relocation on the applicant's mother, the record reflects that she is 72 years old and has been living in the United States since 1992. On motion, counsel notes that the applicant's mother has been diagnosed with several heart related conditions. Counsel has submitted a medical record which lists her conditions as severe bradycardia, high-grade AV block, hyperlipidemia, hypertension and hyperthyroidism. The medical record indicates that, if there is a change in the applicant's mother's symptoms, she would likely need "pacemaker implantation urgently." The record also reflects that the applicant's mother is taking several medications for these conditions.

The evidence is sufficient to establish that the applicant's mother has several medical conditions including significant heart conditions, and the AAO will consider the impacts that these serious medical conditions would have on her ability to relocate, as well as the fact that relocation to the Philippines would result in a disruption to the continuity of her medical care. Given the seriousness of the applicant's mother's medical conditions, her age, her length of residence in the United States and the common impacts of relocation, the AAO finds the record to establish that she would experience extreme hardship upon relocation to the Philippines.

On motion counsel asserts that the applicant's spouse will experience medical, financial and emotional hardship if she is separated from the applicant. *Brief in Support of Motion*, received February 2, 2009. The applicant's spouse has submitted a statement outlining the assertions made by counsel. *Statement in Support of Motion*, received February 2, 2009. She also states that her mother was diagnosed with breast cancer in 2005.

With respect to medical hardship, counsel states that, in addition to the eczema she suffers, the applicant's spouse has come under a doctor's care for degenerative disc disease which has caused her excruciating pain. Counsel states that the applicant's spouse has received regular treatment for this condition and faces the prospect of surgery "at some time in the future."

As discussed above, the single document regarding the applicant's spouse's skin condition is not sufficiently probative to establish the severity of her condition and what impact it has on her daily life. The evidence submitted in support of the motion establishes that the applicant's spouse has been diagnosed with degenerative disc disease and that the treating physician recommended a course of physical therapy and noted that the applicant's spouse "should be able to be treated conservatively for the foreseeable future." The record is not clear as to the severity of the applicant's spouse's back condition, nor is there any indication that the applicant's spouse would be unable to receive treatment in the applicant's absence. However, the AAO recognizes that the applicant's spouse may suffer some physical hardship in the applicant's absence and will consider this when evaluating the impacts on the applicant's spouse in the aggregate.

On motion, counsel notes that the applicant and his spouse have had a second child and the applicant's spouse would suffer the physical hardship of having to care for their children alone. He asserts that the applicant's spouse is afraid of caring for the children without the applicant, who has been their primary caregiver, and that she would have to quit her job in order to care for them. Counsel asserts that it was only the applicant's care for their children that allowed their household to survive financially, and refers to a psychological evaluation of the applicant's spouse as evidence of emotional hardship. Counsel refers to a psychological evaluation of the applicant's spouse in asserting that the applicant's son would also experience hardship due to the applicant's spouse's low "frustration tolerance."

The psychological evaluation of the applicant's spouse by [REDACTED] dated November 16, 2004, notes that the applicant's spouse has a low frustration tolerance and discusses her anxiety that she will hurt her son physically, either through corporal punishment or other rough physical

treatment, without the applicant to assist her with daily parenting duties. The record does not contain any additional documentation which indicates that the applicant's spouse has a history of emotional or mental illness, or that she has continued to seek treatment for her hostile ideations. The evaluation does not provide any basis for a prognosis of her condition if she were to return to the Philippines. The AAO will consider this emotional hardship when examining the hardship impacts on the applicant's spouse in the aggregate.

The record does not contain sufficient documentation to establish that the applicant's spouse would be unable to meet the family's financial obligations if the applicant were not admitted. The record on appeal indicated that the applicant was unemployed. No evidence has been submitted in support of the motion to show that the applicant is now employed. Based on these observations the AAO is unable to discern any uncommon financial impact due to separation if the applicant's spouse remains in the United States.

The AAO does take notice of the fact that the applicant's spouse has medical conditions which could present impacts on her without the applicant's presence. The AAO also recognizes that the applicant's spouse will have to assume additional parenting and household duties in the applicant's absence, and that the applicant's mother has several medical conditions and would be unable to assist her.

The record also reflects that the applicant's mother would experience hardship as result of separation from the applicant. In support of the motion, the applicant's mother submitted a statement in which she asserts that the applicant and his spouse helped care for her physically and financially. *Statement of the Applicant's Mother*, received February 2, 2009. She also asserts that she would suffer emotional hardship if the applicant returned to the Philippines and that, due to her medical conditions, she would be unable to travel to the Philippines to visit the applicant. As noted above, the evidence in the record establishes that the applicant's mother has a number of medical conditions including significant heart conditions.

Considering the applicant's spouse's medical conditions, raising her children without the support of the applicant, and the normal effects of separation of a loved one, the AAO finds the record establishes that the applicant's wife would face extreme hardship if she remained in the United States without the applicant. In addition, considering the applicant's mother's medical conditions, inability to travel to the Philippines and loss of support of the applicant, the AAO finds the record establishes that the applicant's mother would face extreme hardship if she remained in the United States without the applicant.

As the applicant has established extreme hardship to a qualifying relative, the AAO may now move to consider whether he warrants a waiver 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).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's misrepresentation. The favorable factors in this case include the presence of the applicant's spouse, the presence of his U.S. citizen children and his LPR parent, the physical and emotional hardship of his spouse upon separation and the lack of any criminal record while he has resided in the United States. The favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The motion will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the motion will be sustained.

**ORDER:** The motion is granted and the appeal is sustained. The application is approved.