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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: **OCT 18 2011**

Office: CHICAGO

FILE: [REDACTED]

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:

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,

*Maria Yeh*

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 and the waiver application will be approved.

The record establishes that the applicant, a native and citizen of the Philippines, attempted to procure entry to the United States in October 1995 by presenting a fraudulent passport. *Notice of Visa Cancellation/Border Crossing Card Voidance*, dated October 26, 1995. The applicant was denied entry to the United States and was returned to the Philippines. Subsequently, the applicant procured entry to the United States in February 1996 by presenting another fraudulent passport. *Record of Sworn Statement*, dated July 28, 2008. The applicant was thus 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 attempted to procure entry to the United States in 1995, and for procuring entry to the United States in 1996, by fraud or willful misrepresentation.<sup>1</sup> The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children, born in 2002, 2005, 2007.<sup>2</sup>

The field office director concluded 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 March 10, 2009.

In support of the appeal, counsel for the applicant submits the following *inter alia*: documentation establishing that the applicant is expecting her fourth child in June 2009; information pertaining to the applicant's spouse's employment; an affidavit from the applicant, dated May 4, 2009; an affidavit from the applicant's spouse, dated May 4, 2009; a letter from the applicant's child's teacher; and tax documentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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,

<sup>1</sup> The record shows that the applicant was convicted of [REDACTED] *Certified Statement of Conviction/Disposition*, [REDACTED]. The field office director did not address whether or not this conviction is for a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) of the Act also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

<sup>2</sup> The record indicates that the applicant was pregnant with her fourth child with an estimated due date of June 21, 2009. See Letter from [REDACTED] dated March 17, 2009.

other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (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 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 (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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or children can be considered only insofar as it results in hardship to a qualifying relative. 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.

The applicant’s U.S. citizen spouse contends that he will suffer extreme hardship were he to remain in the United States while his wife relocates abroad due to her inadmissibility. In a declaration, the applicant’s spouse explains that were his wife to relocate abroad, he would be completely devastated. In addition, the applicant’s spouse notes that his wife is the primary caregiver to their young children and were she to relocate abroad, the children would have to accompany her abroad so that she could continue caring for them and such an arrangement would cause him hardship due to long-term separation from the children. Alternatively, he explains that were all four of his children to remain in the United States with him, he would suffer hardship as he would become sole caregiver and breadwinner to four young children without the daily support from his wife. In addition, the applicant’s spouse asserts that his children would experience extreme hardship due to long-term separation from their mother, the primary caregiver. Finally, the applicant’s spouse contends that he would have to sell the home to be able to financially support two households. *Affidavits of* [REDACTED], dated July 22, 2008 and May 4, 2009 and *Affidavit of* [REDACTED] dated May 4, 2009.

Due to the applicant's inadmissibility, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and breadwinner to four young children without the complete support of the applicant. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

The applicant's U.S. citizen spouse declares that he would experience extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility. To begin, he explains that he was born in raised in the United States and has no ties to the Philippines. He notes that he and his children have never even been to the Philippines and are unfamiliar with the country, culture, customs and language. Moreover, the applicant's spouse contends that he would suffer hardship were he to relocate abroad due to long-term separation from his parents, three sibling, thirteen aunts and uncles and nineteen cousins, who reside in the United States, and the loss of his home in [REDACTED]. Further, the applicant's spouse asserts that the level of crime and violence [REDACTED] wife is from, is very high and he and the children would be in danger. Finally, the applicant's spouse documents that he has been gainfully employed as a Tool Design Engineer with [REDACTED] since 1999 and a relocation abroad would cause him professional and financial hardship. *Supra and Brief in Support of Appeal.*

In support, documentation has been provided by counsel establishing the problematic country conditions in the Philippines, specifically, [REDACTED]. In addition, a letter has been provided confirming the applicant's spouse's gainful employment with [REDACTED] earning over \$70,000 per year. *Letter from [REDACTED], Employee Relations Manager, [REDACTED] dated July 15, 2008.* Counsel has also provided evidence of the applicant's spouse's home ownership in [REDACTED] *Certification of Home Ownership from [REDACTED] Home Mortgage, dated March 23, 2005.* Finally, an evaluation has been provided from [REDACTED] outlining the emotional hardships the applicant's spouse would experience were he to relocate to the Philippines. *Clinical Evaluation from [REDACTED] dated March 8, 2007.*

The record reflects that the applicant's spouse was born and raised in the United States. Were he to relocate to the Philippines to reside with the applicant, he would have to adjust to a country with which he is not familiar. He would have to leave his community, his gainful employment, his family and his home, and he would be concerned about his safety<sup>3</sup> and well-being<sup>4</sup> in the Philippines. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the

<sup>3</sup> The U.S. Department of State has issued a Travel Warning for the Philippines, in particular the island of [REDACTED], due to the risks of terrorist activity. *Travel Warning, U.S. Department of State, dated June 14, 2011.*

<sup>4</sup> As noted by the U.S. Department of State, "The portion of the population living below the national poverty line increased from 24.9% to 26.5% between 2003 and 2009, equivalent to an additional 3.3 million poor Filipinos...." *Background Note-Philippines, U.S. Department of State, dated June 3, 2011.*

meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to reside in the Philippines, regardless of whether they accompanied the applicant or remained in the United States, community ties, support letters, home ownership and the passage of more than fifteen years since the applicant's fraud or willful misrepresentation when procuring entry to the United States. The unfavorable factors in this matter are the applicant's fraud or misrepresentation in 1995 and 1996, as outlined in detail above, periods of unlawful presence and employment while in the United States, and a conviction in 1996.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, 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 sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.