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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: **SEP 12 2011**

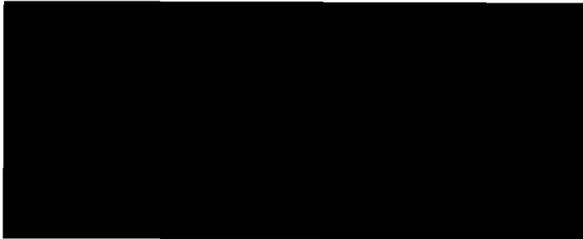
Office: SAN FRANCISCO, CA

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IN RE: 

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,


for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for presenting a passport under a false name to the United States Consulate in Manila on July 19, 1990 in order to procure a visitors visa. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his qualifying spouse and children.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated June 7, 2010.

The record shows that the applicant has been convicted of Shoplifting on July 28, 1993. The field office director did not address whether or not this conviction is 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) 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).

The applicant's attorney provided a brief in support of the applicant's waiver application. In the appeal brief, the applicant's attorney asserts that the qualifying spouse will suffer emotional, psychological and financial hardships as a result of her separation from the applicant. Further, the applicant's attorney indicates that the qualifying spouse would lose her health insurance that she receives through the applicant if the applicant returns to the Philippines. The applicant's attorney also indicates that the qualifying spouse has lived in the United States for over twenty-five years, that she is already integrated into American society and has close family ties to the United States. Further, the applicant's attorney asserts that the qualifying spouse would suffer as a result of economic, political and social conditions if she relocated to the Philippines with the applicant.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal brief, a declaration from the qualifying spouse, child custody and support documentation regarding the applicant's children, photographs, letters from the children, proof of medical insurance, a copy of the qualifying spouse's passport, a marriage certificate, birth certificates for the applicant and qualifying spouse's children, a psychological evaluation, financial documentation, identification documents for the qualifying spouse's family members in the United States, medical records for the qualifying spouse's parents, country condition materials, criminal records regarding the applicant and the qualifying spouse's ex-husband, financial documentation and documentation submitted with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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

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

Section 212(i) of the Act provides:

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 alien 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. 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).

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 qualifying relative is his United States citizen wife. The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, an appeal brief, a declaration from the qualifying spouse, proof of medical insurance, birth certificates for the qualifying spouse’s children, a psychological evaluation, financial documentation, identification documents for the qualifying spouse’s family members in the United States, medical records for the qualifying spouse’s parents, country condition materials, criminal records regarding the qualifying spouse’s ex-husband, financial documentation and documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney asserts that the qualifying spouse will suffer emotional, psychological and financial hardships as a result of her separation from the applicant. Further, the applicant's attorney indicates that the qualifying spouse would lose her health insurance that she receives through the applicant if the applicant returns to the Philippines. The applicant's attorney also indicates that the qualifying spouse has lived in the United States for over twenty-five years, that she is already integrated into American society and has close family ties to the United States. Further, the applicant's attorney asserts that the qualifying spouse would suffer from economic, political and social country conditions if she relocated to the Philippines with the applicant.

The AAO finds that the applicant has established that his wife would suffer extreme hardship as a consequence of being separated from him. With respect to the emotional and psychological hardships claimed by the applicant's attorney, the record contains an affidavit from the qualifying spouse and a psychological evaluation. In her affidavit, the qualifying spouse indicates that she has suffered through an abusive relationship with her ex-husband, who does not pay any child support, and that the applicant has provided emotional and financial stability for herself and her children. The record also contains police reports and court documents to confirm that her ex-husband was abusive. Further, tax returns support the qualifying spouse's assertions that she does not receive any financial support from her ex-spouse. Moreover, the psychological evaluation contains a diagnosis of Major Depressive Disorder, moderate, and indicates that the applicant's spouse experiences "symptoms of posttraumatic stress disorder" and that living with the applicant has decreased some of these symptoms. Further, the evaluation notes that the qualifying spouse is "at risk for a disabling mental disorder that will lead to job loss and require her to be supported by disability insurance." The applicant's attorney further asserts that the qualifying spouse relies upon the financial contributions and health insurance of the applicant. The record contains tax returns, letters from employers, wage and tax statements, copies of several credit card bills and other expenses. The documentation demonstrates that the applicant earns almost twice as much income as the qualifying spouse, and that the qualifying spouse would face financial hardship due to loss of the applicant's income, in light of her expenses. Further, the record contains documentation indicating that the qualifying spouse and the qualifying spouse's and applicant's children are covered under the applicant's health insurance, and without the applicant's employment she would have the additional expense of health insurance. As such, the applicant has established that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to the Philippines. The qualifying spouse has lived in the United States for over twenty-five years and her children, parents and siblings live in the United States and are United States citizens. The record contains identification documents to prove that the qualifying spouse's family members live and have status in the United States. In addition, in her affidavit, the qualifying spouse also asserted that she helps to take care of her elderly parents. The record contains medical records for the qualifying spouse's parents indicating that they require frequent doctor visits. The record also contains country condition information to support the claim that the applicant's spouse may suffer financially in the Philippines due to a lack of employment opportunities. Further, the record reflects that it would be financially difficult for the applicant's spouse, considering her current

income and expenses, to relocate to another country. As such, the record reflects that the cumulative effect of the hardships to the qualifying spouse, in light of her family ties to the United States, her length of residence in the United States, and her loss of employment were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, his qualifying spouse would suffer extreme hardship if she relocated to the Philippines with him.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(i) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's United States citizen spouse would face if the applicant is not granted this waiver, regardless of whether she accompanied the applicant or remained in the United States, and his support from the qualifying spouse and family. The unfavorable factors in this matter are the applicant's convictions for shoplifting in 1993 and reckless driving in 2003 and his use of a fraudulent passport to obtain a visitors visa.

Although the applicant's violation of the immigration law cannot be condoned, his violation occurred more than twenty years ago, and the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.