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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**



HLS

Date: **AUG 06 2012**

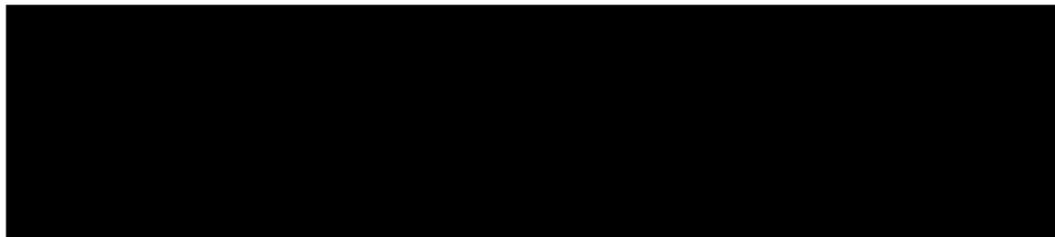
Office: SAN JOSE, CA

FILE: 

IN RE: Applicant: 

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

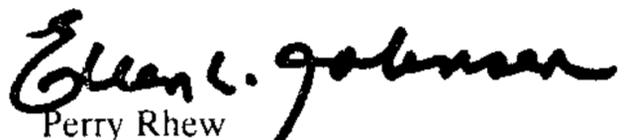
ON BEHALF OF APPLICANT:



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, San Jose, California. The matter 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated May 27, 2010.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering the applicant's husband's medical and psychological issues.

The record contains, *inter alia*: a letter from the applicant; letters from the applicant's husband, [REDACTED]; letters from the couple's children; a letter from the applicant's mother; psychological evaluations of [REDACTED]; letters from [REDACTED] physicians; copies of [REDACTED] medical records; a letter from [REDACTED] employer; letters from [REDACTED] siblings; a letter from the couple's church; a copy of the U.S. Department of State's Country Specific Information for the Philippines and other background materials; copies of tax returns, bills, and other financial documents; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that she entered the United States in 1986 by using an assumed name and an illegally obtained visa. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED], states that he has known his wife since they were about seven years old in the Philippines. He states they had one child together in the Philippines and that when the applicant was expecting their second child, he moved to the United States in order to live with his mother and siblings. According to [REDACTED], he was hoping to return to the Philippines and petition to bring the applicant and their children to the United States. However, [REDACTED] states that he had two car accidents in the United States. He states the second accident was very serious and he sustained severe injuries to his spinal cord. [REDACTED] contends that after the applicant heard about his car accident, she came to the United States. [REDACTED] states that the couple had their third child in the United States and that they now have two grandchildren. He also states that he has eight siblings, all of whom live in California. In addition, [REDACTED] states that his family is very involved in their church where he is a pastor and his wife is a teacher. Furthermore, [REDACTED] states that he has several chronic medical conditions, including high blood pressure, cholesterol problems, migraines, dizziness, and vertigo. He contends he has been hospitalized with severe dizziness, nausea, and headache. According to [REDACTED] his wife prepares healthy food for him every day, keeps him motivated to exercise, and drives him to his medical appointments and church activities because he cannot drive due to his vertigo and dizziness. He states that if his wife departed the United States, he would be so depressed that he would not want to live. Furthermore, [REDACTED] contends he cannot return to the Philippines because he is too old to be hired for any job in the Philippines. He also states that he would be unable to afford his medications in the Philippines and would not have medical insurance.

After a careful review of the entire record, the AAO finds that if [REDACTED] remained in the United States without his wife, he would suffer extreme hardship. The record contains ample documentation showing that [REDACTED] has several physical and mental health problems, and that he requires his wife's assistance. A letter from [REDACTED] physician states that he has resistant hypertension, dyslipidemia, elevated blood glucose levels, obstructive sleep apnea, chronic headaches, vertigo, dizziness, and light headedness. According to the physician, these conditions are exacerbated by stress and [REDACTED] takes several prescription medications for his conditions. In addition, the physician states that it is extremely dangerous for patients with vertigo to drive, so [REDACTED] wife usually drives him to his medical appointments and she also plays a critical role in helping him closely monitor his diet. Another letter in the record states that [REDACTED] has a severe

degree of upper airway obstruction during sleep and that he requires a nasal CPAP with a mask and a heated humidifier during sleep. Copies of [REDACTED] medical records indicate he was seen in the emergency department for dizziness and that he also complained of chest pain. The record also contains documentation corroborating [REDACTED] contention about being in car accidents in 1985 and 1986, and copies of his medical records indicate he has had problems with his lumbar spine since 1986, problems with his cervical spine in 1987, and continues to have frequent office visits for lumbar disc degeneration in 2007. In addition to medical problems, the record shows that [REDACTED] also has psychological issues. A psychological evaluation in the record states that [REDACTED] was the twelfth of thirteen children growing up in harsh conditions in the Philippines and that his entire family had to do extensive farm work every day. His parents were reportedly emotionally distant and strict disciplinarians who often beat the children with belts. According to a therapist's letter, his father died of a stroke in 1976 when [REDACTED] was sixteen years old, and then in 1979, his mother left the Philippines for the United States. Letters from therapists in the record contend that his father's death, followed by his mother's departure, had a major impact on [REDACTED] who adopted a wild lifestyle, drank to alleviate loneliness, frequently got into street fights, was exposed to gang activity where he was threatened at gun point and knife point on repeated occasions, and ultimately had a psychological breakdown. The therapists state that it was at this time that [REDACTED] became very emotionally involved with the applicant who became somewhat of a caregiver to him, and that [REDACTED] has had a prolonged and intense emotional dependence on his wife that began after his mother departed the Philippines. The therapists conclude that separation from his wife would exacerbate [REDACTED] severe depression and have a "catastrophic psychological impact" on him. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] returned to the Philippines to be with his wife, he would experience extreme hardship. As stated above, [REDACTED] has numerous physical and mental health issues for which he is being monitored and treated. The AAO recognizes that returning to the Philippines would disrupt the continuity of his health care and takes administrative notice that although adequate medical care is available in major cities in the Philippines, even the best hospitals may not meet the standards of medical care, sanitation, and facilities compared to the United States. *U.S. Department of State, Country Specific Information, Philippines*, dated June 8, 2012. In addition, the AAO recognizes that [REDACTED] has lived in the United States for the past twenty-nine years, almost his entire adulthood. [REDACTED] would need to readjust to living in the Philippines, a difficult situation made even more complicated by his medical and mental health problems. Moreover, a letter from his employer confirms that [REDACTED] has been employed in the same company since September 1999. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her lawful permanent resident husband, two U.S. citizen children, and two U.S. citizen grandchildren; the extreme hardship to the applicant's family if she were refused admission; letters of support in the record describing the applicant as loving, caring, kind, and supportive; a letter from the couple's church describing the applicant as an inspiring spiritual leader; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations 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.

ORDER: The appeal is sustained.