

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

[REDACTED]

HS

Date: DEC 03 2012 Office: CHICAGO

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Chicago, Illinois, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted, and the underlying application will be approved.

The applicant, a native and citizen of the Philippines who was found inadmissible 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 procuring admission to the United States through willful misrepresentation of a material fact. 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 with her lawfully permanent resident spouse. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her spouse.

The Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by section 212(i) of the Act. The applicant appealed that decision and the AAO dismissed that appeal on September 20, 2010, finding that the hardship that the applicant's spouse would suffer upon separation from the applicant did not meet the requirements under section 212(i) of the Act. The applicant filed a motion to reopen and motion to reconsider the AAO decision.

On motion, counsel states that there are new facts, primarily the birth of two children and acquisition of a family home, along with escalating medical and psychological conditions, that demonstrate that the applicant's spouse will, in fact, suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. *In support of the motion, counsel submitted a statement and additional Exhibits.*

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 applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record includes but is not limited to, statements from the applicant and the applicant's spouse, letters from family members and friends, medical documentation, financial records, photos and various immigration applications and decisions. The entire record was reviewed and considered in rendering a decision on the motion.

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

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. She does not dispute her inadmissibility, and she requires a waiver under section 212(i) of the Act.

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

- (1) The [Secretary] may, in the discretion of the [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 [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 is inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on qualifying relatives, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident spouse, U.S. citizen mother, and lawful permanent resident father are the qualifying relatives 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).

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-I-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 AAO previously found that the evidence did not support a finding that the applicant’s spouse would suffer extreme hardship if he were to relocate to the Philippines with the applicant or if he were to remain in the United States without her. On motion, counsel for the applicant states that the new evidence presented illustrates that the emotional, financial and psychological hardship that the applicant’s spouse would suffer would be extreme.

In regards to the financial hardship to the applicant’s spouse, counsel for the applicant states that the birth of their two children, when taken in consideration with the other factors documented in the record, have “concurrent, direct and indirect impact upon the applicant’s spouse in the event of the applicant’s departure or, alternatively, [redacted] relocation overseas”. Counsel also states that new evidence illustrates that with the acquisition of a family home, the applicant’s spouse cannot maintain two households should the applicant no longer be able to reside in the United States. The applicant’s spouse also indicates in the new evidence presented that if his wife were to return to the Philippines and he remained in the United States with two young children, he would have to take on additional employment to support the household as well as pay for child care; when at present their care is alternated during the day by the two parents. He also indicates that if he were unable to spend regular time with his children and his wife he would be anxious about his abilities to function as a father and husband. The applicant has now also offered itemized information regarding monthly expenditures for their household, along with copies of various financial documents, in support of the assertions that her spouse would be unable to handle the financial responsibilities for two households if she returned to the Philippines without her spouse.

The applicant’s spouse further indicates in the additional evidence that both he and the applicant are carriers for a genetically acquired trait, Thalassemia, and their children must be screened for the next few years to determine if they also carry the trait. The applicant has offered information that the medical coverage for the family is obtained through her employer and her spouse would be unable to ensure the family’s proper care or treatment without this insurance coverage should they have this condition.

The applicant's spouse also indicates that he is currently seeking mental health treatment here in the United States, but would be reluctant to do in the Philippines for fear of stigmatization. The applicant has offered copies of her medical insurance cards to support these assertions. Additionally, a new letter from Dr. [REDACTED] M.D. is submitted to demonstrate that the applicant's spouse is currently still undergoing treatment for the conditions of Moderately Severe Psoriasis and Irritable Bowel Syndrome both of which are aggravated by stress. A new assessment by Dr. [REDACTED] M.D., a psychiatrist, was also submitted indicating that the applicant's spouse continues to show symptoms of depression and although currently marginally stable, he remains fragile in his ability to function, and maintains telephone contact with the doctor for support. A follow-up letter from Dr. [REDACTED] S.J., Psy.D. seeks to correct the assessment that an initial analysis of the applicant's spouse stemmed from one visit indicating there were in fact four separate visits. Dr. [REDACTED] also reiterates his initial assessment that the applicant's spouse is undergoing severe emotional trauma due to ongoing worries about the applicant possibly leaving the United States, and that he is continuing his treatment under Dr. [REDACTED] care.

Additionally, there were also assessments from doctors for the applicant's parents indicating that her mother suffers from congenital heart failure, arterial septal defect, hypertension, diabetes, chronic renal failure and hyperlipidemia. Her father, according to the information submitted, was diagnosed with dementia after suffering a brain aneurysm. According to a letter from the applicant's mother, the applicant is the only one of her children who regularly assists both parents with their numerous medical appointments, and handles their other regular needs. The applicant's mother indicates that she is comfortable with the applicant handling her needs because she is the only one of her children with a medical background. Moreover, the applicant's mother states that the applicant obtained cellular telephones for both parents so that they can contact her immediately if needed and it would be extremely difficult to manage their lives without the applicant's assistance.

The new evidence submitted when viewed in the aggregate supports the assertions that the qualifying relatives would suffer extreme hardship. If the applicant's spouse remained in the United States he would have to care for two small children on his own while in a fragile condition according to the additional assessments submitted by his health care providers Drs. [REDACTED] and [REDACTED]. This would require additional economic, physical and mental resources, adding further stressors to the conditions he is already suffering from at this time. In addition, if the applicant's spouse relocates to the Philippines, he would likely suffer at the very least a delay in his ongoing treatment while attempting to recover in a country where he does not speak the language. This may result in ineffective treatment as well as reluctance to seek further healthcare.

The applicant has also demonstrated that her parents would suffer extreme hardship without her care and attention to their needs. With the severe health concerns they are facing at this time, it would be unreasonable to believe they would be able to relocate to the Philippines with the applicant. And although the applicant is not their only child, she is the only one who has taken on the primary responsibility for their medical and essential needs. Therefore, separation from her at this critical time would be an extreme hardship to these qualifying relatives.

The AAO finds that the applicant has presented evidence of new facts that illustrate, when considered in the aggregate, that the hardship to her spouse and parents if she were to be separated from them or they relocated would rise to the level of extreme hardship.

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 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 must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility 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 applicant's remorse for her previous actions, the extreme hardship the applicant's lawfully permanent resident spouse, United States citizen mother and lawful permanent resident father would face if the applicant were to reside in the Philippines, the applicant's community ties in the United States, her gainful employment while in the United States, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's material misrepresentation in connection with her initial entry into the United States and her subsequent unlawful presence in the United States.

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.

The applicant has provided evidence of new facts that illustrate her eligibility for a waiver of inadmissibility under section 212(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, the AAO finds that in the present motion, the applicant has met her burden. Accordingly, the motion is granted, and the underlying application is approved.

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