



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H5

DATE: **DEC 18 2012**

OFFICE: PHOENIX, ARIZONA

FILE [REDACTED]  
[REDACTED]

IN RE: [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:  
[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,

*Ron Rosenberg*  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Phoenix, Arizona. The applicant appealed the director's decision, and the Administrative Appeals Office (AAO) rejected the appeal as untimely filed. The applicant filed a motion to reconsider the AAO decision, and the motion was dismissed. The AAO reopens the case on its own motion. The underlying waiver application will be approved.

The applicant is a native and a 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 seeking to procure admission into the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 his U.S. citizen spouse and lawful permanent resident parents.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on his qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated August 23, 2007. The applicant, through his counsel, appealed the director's decision. *See Form I-290B, Notice of Appeal or Motion*, dated September 19, 2007. The AAO rejected the applicant's appeal as untimely. *See the AAO's Decision*, dated May 13, 2010. The AAO also dismissed the applicant's motion, dated June 8, 2010, to reconsider its appeal decision. *See the AAO's Decision*, dated June 29, 2012. The AAO now reopens the case on its own motion.

On appeal, counsel asserted that the director failed to consider the hardship factors cumulatively and erred in determining that the applicant's qualifying relatives would not experience extreme hardship. *See Form I-290B, Notice of Appeal or Motion*, dated September 19, 2007.

The evidence of record includes, but is not limited to: counsel's briefs; statements from the applicant's spouse, his parents, family and friends; a psychological evaluation for the applicant's spouse; medical documentation; financial documents; articles concerning the effects of stress on various medical conditions; country-conditions information for the Philippines; and copies of relationship and identification documents. 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 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 record reflects that the applicant attempted to enter the United States on February 22, 1992 with a passport and an I-551 stamp that belonged to [REDACTED]. The applicant withdrew his

application for admission and returned to the Philippines the next day. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for having attempted to procure admission to the United States through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

Section 212(i) of the Act provides:

- (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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record contains references to hardship the applicant's parents-in-law would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's extended family as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse and his parents are the qualifying relatives for the waiver under section 212(i) of the Act, and hardships to the applicant's parents-in-law will not be separately considered, except as they may affect the applicant's qualifying relatives.

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, 631-32 (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, "[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., *In re 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 now turns to the question of whether the applicant in the present case has established that his qualifying relatives would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the medical conditions of the applicant's spouse and parents make them "unusually susceptible" to stress that would result from their separation from the applicant. Counsel states that they depend on the applicant for their medical care and financial support. Counsel lists poor country conditions in the Philippines, inability to find employment, inadequate

medical care, family ties to the United States, and safety concerns as hardship factors for the qualifying relatives, should they relocate to the Philippines.

The applicant's spouse states that the applicant is her "chief source of emotional support." She becomes depressed and cannot sleep, thinking about the applicant's possible deportation and worrying about his safety if he returns to the Philippines. She also depends on the applicant for her medical care and physical safety. Medical evidence indicates that the applicant's spouse has insulin-dependent diabetes and takes daily injections to control her blood glucose levels. She states that it is critical for the applicant to be with her when her blood sugar level changes suddenly to "dangerous levels;" she becomes disoriented and cannot inject the insulin herself. Articles submitted address the negative effects of stress on diabetes. The applicant's spouse also has reproductive issues. The record indicates that the applicant's spouse is now in her forties and their efforts to conceive have been unsuccessful.

The applicant's spouse particularly is worried about the lack of adequate health care in the applicant's family's town in the Philippines, where she would have to relocate because she no longer has family in the Philippines. To obtain specialized medical care for diabetes, she would have to travel to Manila, which is a 10-hour drive from the applicant's hometown. In addition, her medication needs to be refrigerated, and there are frequent power outages there. Articles in the record corroborate the applicant's concerns about available medical resources in the Philippines.

The record indicates that the applicant's spouse is diagnosed with anxiety disorder and depressive disorder. [REDACTED], a clinical psychologist, states that the applicant's deportation is "likely to have disastrous consequences" for his spouse. [REDACTED] predicts "a further decline" of the applicant's spouse's mental condition and physical health if the applicant is deported. [REDACTED] recommends counseling, psychotherapy, activities to reduce stress, and monthly psychiatric consultations for the applicant's spouse.

The applicant's spouse also is concerned about their financial situation if the applicant returns to the Philippines. They pay two mortgages, one of which is for their rental property. She has a student loan and copayments for her medication and supplies. The record indicates that the applicant works two jobs with hourly rates of \$14.00 and \$14.50. His hourly overtime rate is \$21.75. His spouse works at a bank and earns \$13.13 an hour. The applicant's spouse states that their monthly household expenses are approximately \$4,398 and she cannot afford to pay for them with her income alone. She also states that the applicant "could not obtain employment" in the Philippines, because he does not have a degree and he was unemployed there.

The applicant's parents state that the applicant's absence would cause them extreme emotional and financial hardship. They are age 65 and 70, and medical evidence indicates that they have various medical problems, including hypertension, high cholesterol, diabetes, and gastric disease. They own a business that provides services for the mentally-challenged elderly individuals. The applicant assists his parents when there are staffing shortages. They are concerned that they would not be able to run their business without the applicant's assistance. In accordance with their

custom, the applicant, as the eldest son, also is expected to financially assist his siblings, who are in college. The applicant's parents state that it would be difficult for them to travel to the Philippines to visit the applicant because it is expensive and traveling would affect their ability to manage their financial obligations in the United States.

Letters from family and friends attest to the applicant's good character and the loving relationship between the applicant and his spouse. Letters also address the hardships the applicant's spouse and parents would face resulting from the inadmissibility of the applicant.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship resulting from her separation from the applicant. In reaching this conclusion, we note the applicant's spouse's emotional and medical conditions. The record corroborates the applicant's spouse has medical conditions that require ongoing treatments. The record establishes that the applicant's presence in the United States is essential for her safety and medical care when her blood sugar fluctuates suddenly. Furthermore, the applicant's spouse's emotional condition makes her vulnerable to the stress that would result from separation and the record establishes that such stress would negatively affect her existing medical conditions and physical well-being. Moreover, the record corroborates the applicant's spouse's concern for the applicant's safety in the Philippines, which would increase her emotional hardship. With regards to financial hardship, the record establishes that the household income would be significantly reduced without the applicant's income and his spouse's income alone would be insufficient to cover their household expenses. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship should she separate from the applicant.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to the Philippines. We note that although the applicant's spouse is a native of the Philippines, the record establishes that she does not speak the local dialect of the applicant's region. Furthermore, she has no immediate family there, other than the applicant, who could provide her support. In addition, we note the safety concerns raised by counsel and the applicant's spouse. The country-specific information released by the U.S. Department of State, updated on June 8, 2012, warns U.S. citizens who are travelling to the Philippines regarding the risks to their safety and security while there, including those risks due to terrorism. The report also indicates that kidnap-for-ransom gangs operate in the Philippines and have targeted foreigners, including Filipino-Americans. Moreover, the applicant's spouse has medical problems and evidence in the record establishes that she would experience difficulty finding adequate care in the Philippines.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The AAO will not address the applicant's parent's hardship factors, because we have already found extreme hardship to his spouse, who also is a qualifying relative. The applicant has

established statutory eligibility for a waiver of his inadmissibility under section 212(a)(6)(C) of the Act.

In that the applicant has established that the bar to his admission would result in extreme hardship to his qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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*, 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 adverse factors in the present case are the applicant's attempt to enter the United States fraudulently, for which he now seeks a waiver; his subsequent entry without inspection; and his unauthorized stay after his entry. The mitigating factors include the applicant's U.S. citizen spouse, his legal permanent resident parents, the extreme hardship to his spouse if the waiver application is denied, the absence of a criminal record, his length of residence in the United States, letters attesting to his good character, and his gainful employment.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the

Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the previous decisions of the Field Office Director and the AAO will be withdrawn and the application will be approved.

**ORDER:** The underlying waiver application is approved.