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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



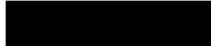
U.S. Citizenship
and Immigration
Services



HL

DATE: FEB 01 2012

OFFICE: SAN FRANCISCO, CA

FILE: 

IN RE: Applicant: 

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

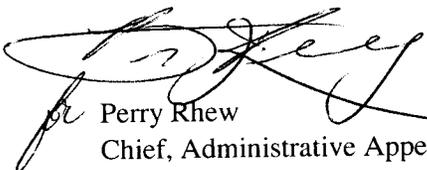
ON BEHALF OF APPLICANT:



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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal to the Administrative Appeals Office (AAO) was dismissed by the Acting Chief, AAO, on February 19, 2009. The matter is again before the AAO on a motion to reopen. The motion will be granted. The AAO's prior decision will be withdrawn. The waiver application will be approved.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry into the United States by willfully misrepresenting a material fact. The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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.

The District 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 District Director*, dated September 15, 2004.

The Acting Chief, AAO, dismissed the applicant's appeal also finding that the applicant had not demonstrated that her inadmissibility would result in extreme hardship to her qualifying relative. *Decision of the Acting Chief, AAO*, dated February 19, 2009.

On motion, counsel contends that the AAO applied a legally incorrect standard of hardship in dismissing the appeal and that the applicant's spouse will suffer extreme hardship if he is compelled to depart the United States. Counsel submits a brief and additional evidence. *See Notice of Appeal or Motion (Form I-290B) and attachments.*

The evidence of record includes, but is not limited to, statements from the applicant and her spouse describing the hardship claimed; an [REDACTED] Visit Verification Form for the applicant's spouse; a March 25, 2009 transcription result of a CT of Chest pertaining to the applicant's spouse and additional medical documentation submitted in support of the applicant's prior waiver applications; a September 25, 2000 psychological evaluation of the applicant's spouse; and counsel's briefs submitted in connection with prior appeals and with this motion. The entire record was reviewed and considered in arriving at a decision on the motion.

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

The record reflects that on February 16, 1986 the applicant attempted to enter the United States using a counterfeit nonimmigrant visa. Although the applicant initially claimed to have obtained this visa from the U.S. Embassy, she subsequently admitted in a February 16, 1986 sworn statement that she had not applied for a visa as she was afraid of being denied and instead had purchased it. Accordingly, the

applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact. Counsel does not contest this finding.

As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, she requires a waiver under section 212(i) of the Act which provides:

(i) (1) The Attorney General [now the Secretary of Homeland Security] may, in the discretion of the Attorney General, 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 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 a VAWA self-petitioner, 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. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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 AAO notes that in our February 19, 2009 decision, we found the record to establish that the applicant had demonstrated extreme hardship to her spouse if he relocated to the Philippines. We noted in our earlier decision that the applicant has provided sufficient documentation to show that her spouse has artery disease which has caused him to be hospitalized and undergo medical procedures such as multiple angioplasties and a stent; and that the applicant’s spouse’s doctor stated he will require a pattern of hospitalization in the future. We also noted that given that the applicant’s spouse has significant health concerns, and he has been under the consistent care of his doctors in the United States, that relocating to the Philippines and disrupting his care would constitute substantial hardship. We find no reason to consider this aspect of the applicant’s claim further and are affirming our finding of extreme hardship upon relocation in the present decision. As a result, we will focus our consideration of the record on the additional evidence that has been submitted to establish that the applicant’s spouse would suffer extreme hardship upon separation.

On motion, counsel asserts that the applicant’s spouse will suffer new hardships due to separation. She contends that in addition to the previously documented health problems of the applicant’s spouse, he has been recently diagnosed with aneurysm of the aorta and needs “a very serious life threatening operation.” Counsel also indicates that the applicant’s spouse is being tested for swollen lymph nodes. She further states that the applicant’s spouse’s two adult children have distanced themselves from him,

and that he fears being left alone to confront his medical problems. Counsel contends that the psychological evaluation by [REDACTED] although dated September 25, 2000, identifies problems with which the applicant's spouse continues to struggle.

Counsel also asserts that the applicant's spouse will suffer financial hardship without the applicant because he will be unable to work due to the surgeries and procedures he will have for his condition.

In an April 14, 2009 statement submitted with this motion, the applicant's spouse states that for the past 15 years he has had medical problems, including diabetes mellitus, hypertension, hypercholesterolemia, sleep apnea, gallstone and glaucoma, and that he has been taking multiple medications. He also states that recently, he has been found to have swollen lymph nodes, the cause of which has not been determined, and, more seriously, with an aortic aneurysm. He states that his vascular surgeon has informed him that he has to have two or more operations and should expect frequent hospitalizations. The applicant's spouse also states that he fears complications could result from surgery which he must have to prevent the blood vessel from rupturing. He states further that he is no longer close to his two grown children from a prior marriage and the applicant is his strength and support. He contends that having his wife besides him gives him "hope to live, the hope of getting better and overcome adversities in life," and that his wife's optimistic attitude towards life is the cornerstone of their relationship.

The record includes March 25, 2009 transcription results of a CT of Chest, from [REDACTED] the applicant's spouse, which indicates that he has been diagnosed with inflamed lymph nodes. The record also includes an [REDACTED] Visit Verification Form generated by [REDACTED] [REDACTED] stating that the applicant's spouse has a serious condition with his aorta and will need to have major surgery, which may entail multiple procedures and hospitalizations.

The AAO finds the record to demonstrate that the applicant's spouse is facing significant medical problems that requires major surgery, and which may result in his undergoing multiple procedures and hospitalizations. When the AAO considers the emotional and physical hardships that lie ahead of the applicant's spouse as a result of his aortic aneurysm, his extended history of serious chronic medical conditions and the hardships normally created by the separation of spouses in the aggregate, we find the record to establish that the applicant's spouse would experience extreme hardship if she is removed and he remains in the United States.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her United States citizen spouse would suffer extreme hardship if she is removed from the United States. Accordingly, the AAO finds that the applicant has established extreme hardship to a qualifying relative and is statutorily eligible for a waiver of inadmissibility under section 212(i) of the Act.

The AAO additionally finds that 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 section 212(h)(1)(B) 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 applicant's United States citizen spouse; the extreme hardship her spouse would face if the waiver application is denied; and her spouse's serious medical condition; the applicant's consistent payment of taxes since 1997, and the absence of a criminal record. The unfavorable factors in this matter are the applicant's attempted entry to the United States by willful misrepresentation and her period of unlawful residence, her failure to appear at her removal hearing and her failure to comply with the August 7, 2003 removal order issued by an immigration judge.

While the AAO finds the applicant's immigration violations to be serious and does not condone them, we, nevertheless, conclude that the mitigating factors in the present case outweigh the negative. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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 met that burden. Accordingly, the prior decision of the AAO will be withdrawn. The waiver application will be approved.

ORDER: The motion is granted. The previous decision of the AAO is withdrawn. The waiver application is approved.