

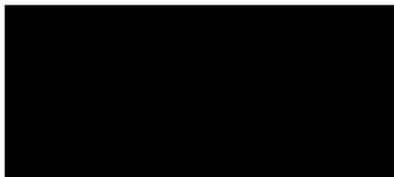
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: FEB 15 2012 OFFICE: MANILA, PHILIPPINES FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

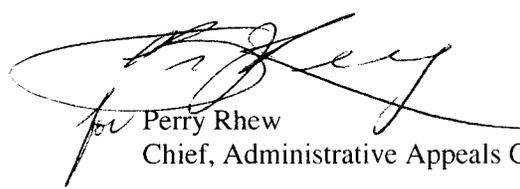
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. 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 having sought to procure a benefit under the Act through fraud or the willful misrepresentation of 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). 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.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 3, 2009.

On appeal, counsel asserts that the Field Office Director abused his discretion in determining that the applicant's spouse will not suffer extreme hardship if the waiver application is denied. *See Notice of Appeal or Motion (Form I-290B)*.

The record includes, but is not limited to, statements from the applicant's spouse describing the hardships claimed; a statement from the applicant describing the circumstances surrounding his application for a nonimmigrant visa; medical documentation pertaining to the applicant's spouse and child; an application for cash assistance; country conditions information on the Philippines; and counsel's briefs. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that in April 2001 the applicant presented fraudulent documentation in support of a nonimmigrant visa application at the United States embassy in Manila. The applicant does not dispute this finding. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure a visa to enter into the United States by willfully misrepresenting a material fact.

Section 212 of the Act provides, in pertinent part, that:

(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.

On appeal, counsel asserts that the applicant’s spouse will suffer emotional and financial hardship due to separation. Counsel asserts that the applicant’s changed circumstances establish extreme hardship. Counsel states that the applicant’s spouse has been taking medication for depression and anxiety, and that her emotional problem has become more vulnerable now that she has her daughter with her while the applicant is in the Philippines. Counsel states further that the applicant was pregnant with their second child, had the first child with her, is currently unemployed and has no medical insurance, and has applied to the State of Maryland for temporary cash assistance and medical insurance.

Counsel states that previously the spouse struggled as a single parent and was unable to work full-time and care for her oldest child, and that she temporarily placed her in the care of the applicant in the Philippines fearing her daughter’s safety and welfare would be compromised by her inability to care for her. Counsel also states that during these same years the applicant’s spouse suffered from a depressive disorder, which was in part caused by the applicant’s immigration case; and that she

continues to require medication for her depression and anxiety. Counsel also states that the spouse's situation is now even more desperate than it was prior to the time of the appeal; that she has brought her daughter back to the United States so that her daughter can obtain a quality education and learn to speak English as it is spoken in the United States; was pregnant with her and the applicant's second child; and is unemployed and has no medical insurance. Counsel further states that separation from the applicant has adversely affected his spouse's practical, social and occupational functioning.

In a July 21, 2011 statement, submitted after the appeal, the applicant's spouse states that in March 2011 she visited the applicant with their two children and became pregnant. She states that on June 10, 2011 she lost the baby while she was still in the Philippines because she was worried and scared to return to the United States by herself. She states that she feels incomplete and alone, and before the miscarriage she did not sleep for a week because she kept thinking about being without the applicant when she returns to the United States. The applicant's spouse asserts that her stress resulted in the loss of the child.

In support of these claims the record contains a January 16, 2006 Behavioral Health Specialist Referral prepared by a Behavioral Health Specialist. The specialist states that the applicant's spouse reported being tired and lacking appetite, having difficulty sleeping, crying often, having difficulty concentrating and staying focused, and worrying about the care of her child while at work. The specialist also reports that the applicant's spouse's score on the Zung Self Rating Depression Scale indicated depression. Medical documentation in the record also indicates that as of March 4, 2008 the applicant's spouse continued to suffer from depression and insomnia, and was prescribed Celexa and Vistril.

Also included in the record is a February 4, 2009 ultrasound report that establishes the applicant's spouse was pregnant at the time of the appeal, with an estimated due date of September 21, 2009 and a July 13, 2011 letter from [REDACTED] Lawton who reports that on June 30, 2011, the applicant was seen for resumption of her thyroid medication and follow up relating to her miscarriage on June 10, 2011. [REDACTED] also states that the applicant's spouse's miscarriage has resulted in a "tremendous amount of stress" for her.

The AAO further notes the applicant has submitted an April 9, 2009 State of Maryland, Department of Human Resources, Application Part 2, indicating that the applicant's spouse applied for temporary cash assistance and for medical insurance. The record, however, does not indicate whether the applicant's spouse's application has been approved.

Based on a review of the record, the AAO finds the applicant to have demonstrated that, in his absence, his spouse would be the caregiver and breadwinner for their two young children. While we note that the applicant's spouse now lives in Maryland near her parents and brother, the record indicates that any help they might provide with childcare is limited as all three are working on a full-time basis. We also observe that the applicant has provided sufficient proof to establish that his spouse has struggled with depression for a number of years and that she recently suffered a

miscarriage. When the applicant's spouse's responsibilities as a parent of two young children, her continuing problems with depression, her recent miscarriage and the hardships normally created by the separation of a family are considered in the aggregate, we find the record to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

With respect to relocation, counsel asserts that the applicant's spouse would experience hardship in the Philippines because she would not be able to find any employment or source of income in the Philippines where unemployment is 11.3 percent and 40 percent of the population subsists on less than \$2/day, as she is too old, lacks references, recommendations, work history/background from a local entity or persons who would vouch for her; that it is extreme hardship for any United States citizen to move to the Philippines under its current economic conditions; and that relocation for the applicant's spouse would mean living in poverty. Counsel also asserts that the applicant's spouse has no ties to the Philippines, having lived in the United States for 9 years, now 11+ years; that she has no friends or relatives in the Philippines and, as a result, would not have any support structure; that she has no property in the Philippines; and that she is ignorant of the Philippines present way of life. Counsel contends that relocation will mean that the applicant's spouse will lose her original family unit; that her parents and brother are in the United States, as are aunts, cousins, a nephew and nieces; that her parents are elderly and the applicant's spouse needs to be in the United States to support them; that her parents and brother would suffer emotional hardship if she leaves the United States and that their suffering would directly affect her.

In statements dated March 3, 2008 and January 23, 2009, the applicant's spouse states that all of her relatives are in the United States and that she does not have family in the Philippines. She also states that she cannot leave her parents who are elderly and have medical problems. The applicant's spouse further contends that relocation would negatively impact the entire family and they would suffer financially and emotionally. She asserts that her family has a history of thyroid disease and diabetes, and that she needs to take preventive actions because of her family's predisposition to these diseases. She further states that she suffers from respiratory problems and allergies when she is in the Philippines and that her older child suffers from asthma and respiratory problems, and that they would have trouble living there. She states that her spouse is not employed in the Philippines, although he has applied for jobs on several occasions and that she does not think that she will get a job there because of the poor economy. She further contends that she would be in danger in the Philippines due to crime and violence and states that she would not get the same quality health care and benefits in the Philippines.

Country conditions information in the record, including 2008 country specific information, indicates widespread corruption and criminal activity in the Philippines. The record also includes medical reports which indicate the applicant's older child suffers from and was treated for asthma and respiratory problems in the Philippines. A July 13, 2011 statement from [REDACTED] indicates the applicant's spouse is on thyroid medication. We further note that the U.S. Department of State has issued a Travel Warning for the Philippines indicating that terrorist attacks are most likely to occur in the Sulu Archipelago and on Mindanao, but that "terrorist attacks [can] be indiscriminate and

occur in any area of the country, including Manila.” The Travel Warning also indicates that kidnap-for-ransom gangs are active throughout the Philippines and have targeted foreigners, including U.S. citizens. See U. S. Department of State, Bureau of Consular Affairs, Washington, DC, *Travel Warning*, January 5, 2012.

We note the emotional impact on the applicant’s spouse of relocating to the Philippines after the length of time she has resided in the United States, her lack of family ties to the Philippines (beyond the applicant), the separation from her immediate family, the medical problems she has experienced in the Philippines as a result of its climate and her legitimate concerns regarding her safety. We find that when these hardship factors are considered together with hardships that are a common result of relocation, the applicant’s spouse would experience extreme hardship if she joined the applicant in the Philippines.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his United States citizen spouse would suffer extreme hardship if he is unable to reside in the United States. Moreover, it has been established that the applicant’s spouse would suffer extreme hardship if she relocates abroad to reside with the applicant. 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.

As the applicant has established extreme hardship to his spouse as a result of his inadmissibility, he is statutorily eligible for a waiver under section 212(i) of the Act. Accordingly, the AAO now turns to a consideration of the applicant’s eligibility for a favorable exercise 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 and U.S. citizen children; the extreme hardship his spouse would face if the waiver application is denied; and the absence of a criminal record in the Philippines. The unfavorable factor in this matter is the applicant’s attempt to procure a nonimmigrant visa to the United States by willful misrepresentation.

While the applicant’s immigration violation was serious and the AAO does not condone it, we find the mitigating factors in the present case to 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), 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 appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.