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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



H5

DATE: FEB 27 2012 OFFICE: LOS ANGELES, CALIFORNIA

FILE:



IN RE:

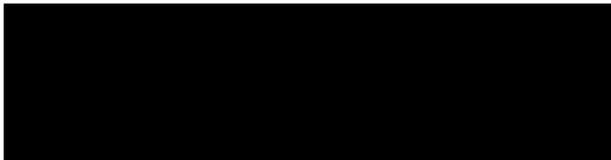
Applicant:



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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles – District 23, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. The applicant through counsel does not contest this finding of inadmissibility. Rather, 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 with her husband and stepchildren.

The Field Office Director concluded that the applicant 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. *See Decision of Field Office Director*, dated May 14, 2009.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) improperly ignored and gave little or no weight to the qualifying family member's health problems, and thereby, its denial of the applicant's waiver application was arbitrary and capricious. *See Form I-290B, Notice of Appeal or Motion*, dated June 12, 2009.

The record includes, but is not limited to: a brief from counsel; letters of support; biographic, employment, medical, and financial documents; country conditions information; and photographs. 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 Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having presented a passport and U.S. visa that was obtained through improper means upon being admitted to the United States on or about May 1, 1999. The record supports this finding, and the AAO concurs that this misrepresentation was material. Thereby, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], 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 of Homeland Security] 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. Hardship to the applicant 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. 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).

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.

Counsel contends that the applicant’s spouse will suffer extreme emotional, physical, and financial hardship upon separation from the applicant because the applicant serves as the spouse’s caregiver and primary breadwinner given the spouse’s medical conditions and unemployment due to his medical disability. Counsel submitted a statement from the spouse in which he discusses his courtship with the applicant; how the applicant assists him with his daily activities because of his medical conditions; and his concerns for the applicant’s wellbeing if she were to return to the Philippines without him. Counsel also submitted medical documents, indicating the spouse’s diagnoses and treatments for: congestive heart failure, prostate cancer, a pacemaker, diabetes, a stroke, atrial flutter, and hypertension. And, counsel submitted a psychological evaluation, in which the mental health professional discusses the applicant’s and the spouse’s biographic information; employment and medical histories; how the applicant provides support to the spouse; the spouse’s feelings if the applicant were to return to the Philippines without him; and the applicant’s and the spouse’s current mental health and diagnoses.

The AAO finds that the record is sufficient to establish that the applicant’s elderly spouse would endure emotional and physical hardship due to the applicant’s inadmissibility. Medical documentation has been provided that the spouse has ongoing medical conditions that require the applicant’s emotional and physical support given her expertise and education as a professional caregiver with a background in nutrition. And, documentation has been provided concerning the spouse’s current mental health and the role that the applicant has in ensuring the spouse’s mental wellbeing.

However, the AAO finds that the record is unclear concerning the financial hardship that the spouse would endure due to the applicant’s inadmissibility. The record establishes that the spouse

has been unemployed and has been receiving Social Security benefits since October 2003 due to his medical disability. Yet, the record does not include any evidence that the spouse would be unable to support himself or to meet his financial obligations in the applicant's absence. Moreover, the record includes evidence that he receives financial support from his family in the United States: "... he would be separated from his family in the United States, which includes four adult children and five grandchildren. He would lose the emotional and financial support provided by his family." *I-290B Brief in Support of Appeal*. And, the record does not include specific evidence that the applicant would be unable to contribute to hers and the spouse's households if she were to return to the Philippines. Rather, the record only includes general country conditions information and statements that the applicant would be unable to find employment or would be underemployed in the Philippines because of her age and absence from the job market there.

Nevertheless, the record reflects that the cumulative effect of the emotional, physical, and medical hardship that the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The [REDACTED] thus concludes that were the applicant's spouse to remain in the United States without the applicant due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

Additionally, counsel asserts that the applicant's spouse would endure extreme hardship if he were to relocate to the Philippines because he would not receive the medical or psychological care that he needs; he would be separated from his children and grandchildren; he would have a difficult time assimilating given that he does not have any family or social ties and is unfamiliar with the culture and language; he would jeopardize his Social Security benefits; and he would face threats to his physical security because of crime and terrorism. The applicant's spouse also asserts that he would find it difficult to survive in the Philippines because of its humid climate and diseases to which he has not developed immunity.

The record is sufficient to establish that the applicant's elderly spouse would suffer extreme hardship if he were to relocate to the Philippines because of his ongoing, serious medical concerns. The [REDACTED] notes that in the Travel Warning for the Philippines, the U.S. Department of State indicates adequate medical care is available in major cities in the Philippines, but the standards of medical care do not meet those provided by the medical community in the United States. The Travel Warning further indicates individuals may be required to provide a cash down payment for the estimated fees at the time of admission into a hospital and that some hospitals have withheld lifesaving medicines and treatment and have refused to discharge patients when medical-related bills have not been paid. The applicant's spouse has limited financial resources to cover his ongoing, necessary, medical care costs in the Philippines given his age, he does not work, and he does not have any investments or accounts there. Moreover, his immediate relatives and extended family members also are in the United States as citizens and lawful permanent residents. As an elderly individual with ongoing, serious medical concerns, it would be difficult for him to travel back and forth from the Philippines to visit his children and extended family members in the United States.

The [REDACTED] notes that the Internet articles concerning the current political and social conditions in the Philippines indicate that there are gang and terrorist-related activities and violence that target political members as well as community and human rights activists. The AAO acknowledges the spouse's subjective fears of the violence and terrorist-related activities in the Philippines; however, the country conditions information fails to show how the spouse would be directly impacted by the political and social conditions there.

Nevertheless, the record reflects that the cumulative effect of the medical hardship, the lack of financial resources, the separation from his family in the United States, and the lack of social and cultural ties that the applicant's spouse would experience upon relocating to the Philippines, rises to the level of extreme. The [REDACTED] thus concludes that were the applicant's spouse to relocate to the Philippines due to the applicants' inadmissibility, the applicant's spouse would suffer 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.

The [REDACTED] notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) 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 stated 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 for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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 case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; letters of support evidencing the applicant's contributions to her workplace and her good moral character; and no evidence of criminal convictions. The unfavorable factors include: the applicant's fraudulent admission into the United States.

Although the applicant's violation of immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

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