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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**

#15



Date: JAN 05 2012

Office: LOS ANGELES

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,

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Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of the Philippines who procured entry to the United States in 2002 by presenting a fraudulent passport. The applicant was thus 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 entry to the United States by fraud or willful misrepresentation. The applicant does not contest the field office director's finding of inadmissibility. Rather, the applicant is applying for 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 mother.

The field office 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 Field Office Director*, dated July 3, 2009.

In support of the appeal, counsel submits the following: a brief, dated July 1, 2009; articles about country conditions in the Philippines; medical documentation pertaining to the applicant's mother; financial documentation; and evidence establishing that the applicant's mother is receiving unemployment insurance. 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:

- (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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 (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 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. The applicant's U.S. citizen mother is the only qualifying relative in this case. Hardship to the applicant, his child or his girlfriend can be considered only insofar as it results in hardship to a qualifying relative. 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 applicant's U.S. citizen mother contends that she will suffer extreme hardship if the applicant is unable to reside in the United States. In a declaration, the applicant's mother contends that her son's daily presence in her life is absolutely invaluable. She explains that he lives with her and helps her financially, emotionally and psychologically. She notes that her son is employed as a Physical Therapist Aide and is thus able to help pay the monthly bills. She references that she suffers from hypertension, asthma and breast cancer and without her son by her side, she would not be able to care for herself. Although she has a daughter in the United States, the applicant's mother explains that she resides in Seattle and has her own family to take care of. *Statement of Hardship from* [REDACTED] dated April 21, 2007.

In support, medical reports have been submitted by counsel establishing the applicant's mother's diagnosis of breast cancer and the need for continued screening as she is considered "high risk." In addition, counsel has provided medical documentation confirming that the applicant's mother suffers from asthma, hypertension, hyperlipidemia and osteoporosis. Moreover, documentation has been provided establishing the applicant's financial contributions to the household based on his full-time employment with Southland Care Center, earning over \$34 per hour. Finally, documentation has been provided establishing that the applicant's mother is receiving unemployment insurance.

Were the applicant removed from the United States, the applicant's U.S. citizen mother would have to care for herself while suffering from a serious medical condition without the complete emotional, physical and financial support of the applicant. The AAO thus concludes that the applicant's U.S. citizen mother would suffer extreme hardship were the applicant to relocate abroad while she remains in the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. Based on the applicant's mother's medical condition, the gravity and unpredictability of the symptoms associated with the

illness, the short and long-term ramifications for those afflicted and the need for those suffering from cancer to be treated by medical professionals familiar with the disease and its treatment, it has been established that the applicant's mother would suffer extreme hardship were she to relocate to the Philippines<sup>1</sup> to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen mother would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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

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<sup>1</sup> The U.S. Department of State notes the following regarding medical care in the Philippines:

Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. Medical care is limited in rural and more remote areas.

Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full.

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 "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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen mother, child and girlfriend would face if the applicant were to reside in the Philippines, regardless of whether they accompanied the applicant or stayed in the United States, his community ties, his gainful employment, and the passage of more than nine years since his fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation in 2002, as detailed above, and his periods of unlawful presence and unlawful employment while 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 his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, 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 sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The field office director shall continue to process the adjustment application.