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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: MAR 28 2012

Office: LOS ANGELES, CA

FILE: [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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and 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 willfully misrepresenting a material fact to procure admission into the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his qualifying spouse and family.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated June 19, 2009.

The applicant's attorney provided a brief in support of the applicant's waiver application. In the appeal brief, the applicant's attorney asserts that the qualifying spouse will suffer emotional, psychological and financial hardships as a result of her separation from the applicant. The applicant's attorney also indicates that the qualifying spouse could not relocate with the applicant because of her psychological hardship related to her past experiences and safety issues in the Philippines and because of her medical issues related to child birth.

The record contains the following documentation: the Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs, statements from the qualifying spouse and applicant, a psychological report, a marriage certificate, identification documents such as a birth certificate for the qualifying spouse and child, photographs, a death certificate for the qualifying spouse's father, medical records for the qualifying spouse's mother, proof of the qualifying spouse's educational expenses, financial documentation, country-conditions documentation regarding the Philippines and the United States, documentation regarding the applicant's credentials and documentation submitted with the Application to Register Permanent Residence or Adjust Status (Form I-485). 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.

Section 212(i) of the Act provides:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's wife 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 record indicates that the applicant used another person’s passport and visa to enter the United States. Therefore, as a result of the applicant’s misrepresentations, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant has not disputed his inadmissibility.

The AAO finds that the applicant has established that his wife would suffer extreme hardship as a consequence of being separated from him. With respect to the emotional and psychological hardships of the qualifying spouse, the record contains a psychological evaluation and letters from the qualifying spouse and the applicant. The record reflects that qualifying spouse experienced the death of her father at a young age in a car accident in which she was a passenger. As a result of her father’s death, her mother suffered severe depression, lost her job and relocated the qualifying spouse and her brother, who were both born in the United States, to the Philippines. As a result of the accident, the qualifying spouse has not learned how to drive and she depends on the applicant to drive her everywhere. In addition to being unable to drive, the qualifying spouse has many “unresolved issues” based on her father’s death, according to the psychological evaluation. She is fearful of raising their child as a single mother, and having their child struggle without a father figure, as she did. Additionally, the psychological report indicates that the qualifying spouse has dependency issues and difficulty coping. The qualifying spouse’s letter reflects that she relies heavily on the applicant emotionally and psychologically, as well as financially. With regard to the qualifying spouse’s financial hardships upon separation, the record contains tax materials, wage statements, a letter from the qualifying spouse’s employer, documentation regarding the qualifying spouse’s problems with debt and her tuition expenses. The record demonstrates that the qualifying spouse relies financially upon the applicant’s income, and that the qualifying spouse

would face financial hardship due to loss of the applicant's income, in light of her debt and expenses.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to be with the applicant. The qualifying spouse's mother, step-father and brother all live in the United States, as do her aunt, uncles and cousins on her father's side of the family. The qualifying spouse also has lived in the United States for most of her life. Further, the record reflects that that it would be financially difficult for the applicant's spouse, considering her current income and expenses, to relocate to another country. Moreover, the qualifying spouse states that she feared for her life, often experiencing burglars stealing things from her home when she lived in the Philippines, and that she still fears for her safety because a terrorist organization had a "long-standing presence" in the town she and the applicant come from, and country-conditions materials, including a U.S. Department of State travel warning for the Philippines, were provided regarding these safety concerns. As such, the cumulative effect of the hardships to the qualifying spouse, in light of her family ties to the United States, her length of residence in the United States, her financial situation and country conditions in the Philippines, rises to the level of extreme.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied. 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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board 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 Board further states 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(i) 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 matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, regardless of whether she accompanied the applicant or remained in the United States, his support from the qualifying spouse and his lack of a criminal record. The unfavorable factors in this matter are the misrepresentations that the applicant made in order to enter the United States and to obtain a social security card.

Although the applicant's violation of the immigration law cannot be condoned, his violations occurred more than ten years ago, and the positive factors in this case outweigh the negative factors. 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 his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.