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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **APR 04 2013** OFFICE: SAN FRANCISCO

[Redacted]

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, 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 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 obtaining an immigration benefit through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, 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 live in the United States with her U.S. citizen spouse.

The 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 the Field Office Director*, dated July 24, 2012.

On appeal, counsel asserts that the “director’s decision is erroneous as a matter of law and an abuse of discretion.” Counsel submits additional evidence of the applicant’s medical history on appeal. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received August 20, 2012, *and counsel’s brief*.

The record contains, but is not limited to: Form I-290B and counsel’s brief; Form I-601; Form I-130; Form I-485, Application to Register Permanent Residence or Adjust Status; statements by the applicant, the applicant’s spouse, and colleagues; a psychological evaluation; medical records; financial documents and tax returns; naturalization, birth and marriage certificates; 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 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 the applicant entered the United States on October 11, 1987 using a fraudulent passport with the name [REDACTED]. The applicant provided a declaration regarding her entry and use of a false passport. The applicant was therefore found to be inadmissible under section 212(a)(6)(C)(i) of the Act, and counsel does not contest her inadmissibility.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, “Secretary”] may, in the discretion of the [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 [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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. In the present case, counsel submits several documents pertaining to the applicant's medical condition. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's spouse is the only 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 spouse is a 42 year-old native of the Philippines and citizen of the United States. He has lived with the applicant since September 2005 and married her on February 7, 2009. He states that the applicant is his "soul mate" and "best friend." He notes that they are inseparable and spend all day, every day together and he "cannot bear the thought of losing" the applicant. A therapist, in her evaluation of the applicant and her spouse, reports that they have a "substantial, rich, complex relationship, and are deeply connected in several ways." She reports that without the applicant, the applicant's spouse would be prone to depression, which could be debilitating.

The record shows that the applicant and her spouse are business partners in a medical career training college where the applicant is the director and president, and the applicant's spouse is the vice president for marketing and admissions. The applicant's spouse indicates through the therapist that without the applicant, he would not be able to manage their college, as "the existence and good functioning of their school is highly dependent on [the applicant's] expertise, wisdom, style and capacity." The applicant's spouse states that losing her would "tremendously affect the operation of the entire organization" and also would affect him financially. He indicates that he could not continue the college because he could not pay their business and personal expenses, including a mortgage, insurance policies, and utilities. Corroborating evidence of the medical college and expenses were submitted.

The applicant suffers from the auto-immune condition of systemic lupus erythematosus with lupus nephritis, advanced stage 4 chronic kidney disease, and she requires a kidney transplant, as medical documentation substantiates. The applicant's spouse states that were the applicant removed to the Philippines, he would worry that the applicant would not receive the "same level of medical care, sanitation and comfort" as compared to the United States. The therapist notes that the applicant's spouse would be "deeply" hurt, because he would not be there to take care of the applicant, as currently he accompanies her to her appointments, attends to her symptoms, monitors her medication and manages her medical care. The therapist also notes that the applicant's spouse's "compromised" income, if the applicant were in the Philippines, would not allow them to afford her medical treatment.

The therapist reports that this would cause “overwhelming” stress and worry for the applicant’s spouse emotionally and financially. Counsel also argues the applicant’s spouse knowing that the applicant’s health “would be at greater risk” in the Philippines would add to his emotional hardship.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant’s spouse, including his inability to manage their personal and professional expenses, financing the applicant’s medical care, the emotional strain of being separated from the applicant, and the worry related to her medical condition. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The applicant also demonstrates that her qualifying spouse would suffer extreme hardship in the event that he relocated to the Philippines. The applicant’s spouse indicates that he has lived in the United States since the age of 12 and would have a hard time adjusting to life in the Philippines. He states he has no immediate family there, and the therapist notes that he has relatives whom he visits regularly living nearby. He states that he would “have to give up everything here in the [United States] just to be with [the applicant].”

The applicant’s spouse states that they would not have financial or medical resources in the Philippines. He indicates that the cost of a kidney transplant according to [REDACTED] is \$3,000 or more per month in medications alone. He laments that he would have a large financial burden to bear without health insurance in the Philippines and he would worry that the applicant is not receiving adequate medical care there.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse, including his length of residence in the United States, adjusting to a country where he has not lived for 30 years, his family and community ties in the United States, the loss of their college and business, and the lack of financial and medical resources in the Philippines. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship were he to relocate to the Philippines to be with the applicant.

Extreme hardship is a requirement for eligibility, but, once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. at 301. 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 her 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-Morales*, 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 she 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 applicant's U.S. citizen spouse, the extreme hardship he would face if the applicant is not granted this waiver, whether he accompanied her or remained in the United States; her family and community ties in the United States; her position as president and director of a medical college; her good character, as indicated in several statements; her lack of a criminal record; and her medical condition. The unfavorable factor in this matter is the applicant's misrepresentation upon entry into the United States over 25 years ago. Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor.

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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.