



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **APR 18 2013**

Office: **SAN FRANCISCO, CA**

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:

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,

for

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion. The motion will be granted and the underlying application approved.

The applicant is a native and citizen of the Philippines who was found to be inadmissible 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 entered the United States using a fraudulent passport. The field office director denied the applicant's Form I-601 waiver application, finding he had not established that a qualifying relative would suffer extreme hardship were the waiver not granted. *Decision of Field Office Director, May 21, 2010.* The AAO dismissed the subsequent appeal, finding that although the applicant had shown the requisite extreme hardship to a qualifying relative as a result of separation from the applicant, he had not shown that the qualifying relative would also experience extreme hardship if she relocated to the Philippines to live with her husband. *Decision of the AAO, July 12, 2012.*

On motion, the applicant's counsel asserts the AAO erred in finding that the applicant's wife would not experience extreme hardship by moving to the Philippines. Having previously found that separation from her husband would impose extreme hardship upon her, we do not reexamine that finding. Rather, we only revisit the issue of extreme hardship due to a qualifying relative's relocation to reside with the applicant overseas.

The applicant's counsel submits a brief contending that the applicant's wife would suffer extreme hardship by relocating to the Philippines, and provides new evidence not previously available, including a medical letter from the doctor who has treated her since 1995, a list of medical prescriptions, social security and medicare benefits information, wage statements, and other financial information. The record consists of the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

- (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 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.

The record reflects that the applicant procured admission to the United States on November 22, 1991 using a Philippine passport with an assumed name. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact.

A waiver of inadmissibility under section 212(a)(6)(C)(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 the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-Moralez*, 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 v. INS*, 138 F.3d 1292, 1293(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.

Previously, the AAO concluded that the applicant had established his wife would suffer extreme hardship if separated from her husband. We do not revisit that finding, but rather focus on whether the applicant has shown that his wife will experience extreme hardship by moving back to the Philippines.

As regards whether returning to the Philippines, from which she emigrated in 1955, will impose extreme hardship on the qualifying relative, the updated record confirms the applicant’s wife has been under medical care since 1995 for high blood pressure and high cholesterol and since 2009 for Type 2 diabetes diagnosed when she was nearly 70 years old. Documentation establishes that she is taking prescription medication to control each of these conditions. She claims to suffer ongoing pain from a car accident many years ago, as well as from arthritis diagnosed in 2009. Financial evidence supports the contention that she is retired, receives social security benefits of approximately \$8,700 annually, and that her Medicare benefits would not cover her in the Philippines. The record also contains evidence that the applicant’s monthly earnings during 2012 were slightly less than \$2,000. The applicant has provided country condition information showing that his wife would not qualify for any Philippine social security benefits, while the combination of his age, 63,¹ and lack of employment history there for over 20 years would make it difficult for him to find employment.

¹ The record contains documentation indicating that age discrimination is a problem in the Philippines. Further, the international companies offering health insurance observe a mandatory retirement age of 55.

Although born and raised in the Philippines, the applicant's wife has spent nearly 58 years in the United States, the last 35 as a U.S. citizen. As her parents are deceased and where the applicant's immediate family members (consisting of five children) live in this country, neither has relatives to support them abroad in lieu of any established eldercare or senior support network.

The evidence suggests that moving overseas would involve loss of subsidized medical benefits and sever the qualifying relative's connections with her long-time primary care physician, while also depriving the household of substantially all of its non-social security income. U.S. government reporting confirms that while adequate medical care is available in major cities of the Philippines, payment in cash is often required prior to treatment. *See Philippines—Country Specific Information*, U.S. Department of State (DOS), February 14, 2013. In addition, the U.S. government advises its citizens not to travel to portions of the country due to terrorist violence and kidnappings for ransom. *See Travel Warning—Philippines*, DOS, January 30, 2013. Lacking jobs, medical insurance, a family support network, or substantial pension benefits, the qualifying relative and her husband would face difficult prospects returning to their native country. Based on the updated record, we find that returning to the Philippines to live with the applicant would result in hardship to the qualifying relative beyond those problems normally associated with relocating abroad.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse 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 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 hardships the applicant’s wife would face if the applicant were to reside in The Philippines, regardless of whether she accompanied the applicant or remained here; supportive statements; passage of almost 22 years since the applicant came to the United States; lack of a criminal record; and history of stable employment. The unfavorable factors in this matter involve the applicant’s use of fraudulent documents to procure admission to this country.

Although the applicant’s violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant’s violations of immigration law, the AAO thus finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the waiver application will be approved.

ORDER: The motion is granted. The prior decision of the AAO is vacated and the waiver application is approved.