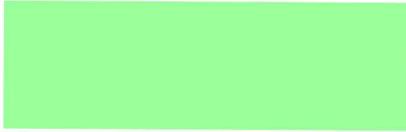


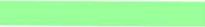


**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



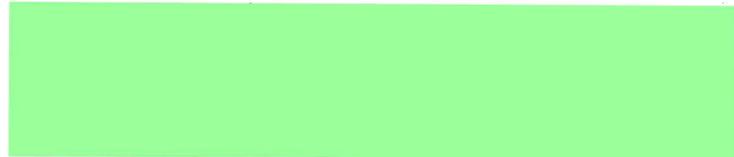
DATE: **AUG 06 2013** OFFICE: CHICAGO, IL

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, 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 has resided in the United States since March 1993, when he was admitted after presenting a fraudulent passport. He 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the son of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen mother and siblings.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 26, 2012.

On appeal, counsel submits a brief in support, U.S. Department of State reports on the Philippines, a previously submitted neurological evaluation and a life story, copies of medical records, as well as evidence of professional and community awards. In the brief, counsel contends the applicant's mother will experience extreme hardship upon relocation to the Philippines due to her age, her medical condition, the adverse country conditions in the Philippines, her ties to the United States, and separation from family members who live in the United States. Counsel moreover claims the applicant's mother will experience emotional, financial, and other hardship if the applicant returns to the Philippines without her.

The record includes, but is not limited to, the documents listed above, statements from the applicant, his mother, and other family members, financial and medical records, documentation of employment, additional articles on country conditions in the Philippines, other applications and petitions, evidence of birth, marriage, residence, and citizenship, 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.

Section 212(i) of the Act provides:

- (1) The [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.

In the present case, the record reflects that in March 1993, the applicant presented a passport which did not belong to him to procure admission into the United States. Inadmissibility is not contested on appeal. The AAO therefore finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. citizen mother.

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. 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 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.

Counsel contends the applicant’s community service should be considered in an analysis of extreme hardship because it demonstrates a high degree of integration into the community, and is therefore evidence that deportation of the applicant will result in extreme hardship to the applicant. In support, counsel cites to *In Re O-J-O-*, 21 I&N Dec. 381 (BIA 1996) and *Salameda v. INS*, 70 F.3d 447 (7<sup>th</sup> Cir. 1995). In those cases, the Board of Immigration Appeals (BIA) and the Seventh Circuit Court of Appeals (Seventh Circuit) decided appeals related to suspension of deportation cases under section 244 of the Act, which provided for relief if an alien established extreme hardship to him or herself.<sup>1</sup> The applicant, however, is requesting relief under section 212(i) of the Act, not section 244 of the Act. It is noted that Congress did not include hardship to an alien as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s parent is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant will not be separately considered, except as it may affect the applicant’s parent.

The applicant’s mother contends she will suffer extreme difficulties if she relocates to the Philippines. She explains although she was born in the Philippines, she has lived in the United States since 1986, and all her children and grandchildren live here as well. In addition to her

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<sup>1</sup> Section 244 of the Act has since been repealed, and replaced with the current section 244 of the Act on temporary protected status.

family and community ties to the United States, the mother also states she cannot survive financially if she moves to the Philippines. The mother explains she is now 76 years old, she depends on social security and medicare, and she will be unable to afford medical care in the Philippines for her health conditions if she relocates. Medical records are submitted in support. Counsel adds that the applicant's mother would be subject to adverse country conditions in the Philippines, including violent criminal activity, human rights violations, and threats to women. Documentation on country conditions, including U.S. Department of State reports, is present in the record.

The applicant's mother moreover claims she would experience financial, emotional, and medical-related difficulties without the applicant present. The mother explains because she is retired, she is dependent upon her social security income and the applicant's contributions to meet her financial obligations, adding that he pays for her rent and automobile expenses. A budget worksheet and evidence on income is present in the file. Moreover, the applicant's mother asserts she has already suffered psychologically when she contemplates separation from the applicant. A neuropsychological evaluation is submitted in support. Therein, a psychologist indicates the applicant's mother is experiencing a significant amount of anxiety over her medical concerns and the potential absence of her son. The psychologist further opines the mother reports having chronic headaches, and appears to be concerned about her ability to perform the functions of daily living. Furthermore, the psychologist indicates the mother is no longer driving due to her headaches, and that she relies on the applicant for transportation, as well as emotional and financial support.

The applicant has submitted sufficient evidence of record demonstrating the applicant's mother would experience extreme hardship upon relocation to the Philippines. The record reflects that the mother is 76 years old, and has lived in the United States for over 25 years. The applicant has also shown that his mother has significant community and family ties to the United States, as her five children and all of her grandchildren reside here. Additionally, documentation on country conditions in the Philippines suggest that the mother would be subject to possibly dangerous situations in that country, which would add to the emotional difficulties she would have due to moving away from her other family members in the United States.

In light of the evidence of record, the AAO finds the applicant has established that the parent's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, or other impacts of relocation on the applicant's parent are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's parent relocates to the Philippines.

The record additionally contains sufficient evidence demonstrating the applicant's mother would suffer extreme hardship without the applicant present. The applicant has shown that he and his mother live together, and that he helps support her financially. The record moreover indicates the mother's income is limited to her social security benefits, and even without housing expenses, she does not have sufficient income to meet her financial obligations. Furthermore, although there is

no clear explanation of the mother's medical condition from her medical services provider, the applicant has shown that his mother has some health issues, as well as psychological difficulties. The neuropsychological evaluation indicates the mother has some difficulties functioning, given her age and health problems, and that she experiences anxiety given the applicant's possible removal to the Philippines. The AAO also takes into consideration the fact that inadmissibility under section 212(a)(6)(C) is a permanent bar and given the mother's age and medical conditions travelling to the Philippines to visit her son would be problematic.

The AAO therefore finds there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, psychological / emotional or other impacts of separation on the applicant's parent are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without his parent.

Considered in the aggregate, the applicant has established that the applicant's parent 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-Morales*, 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 unfavorable factors include the applicant's misrepresentation, as well as evidence the applicant was employed in the United States without authorization. The favorable factors include the extreme hardship to the applicant's mother, residence of long duration in the United States, documentation on the applicant's community ties and service, and the applicant's lack of a criminal history.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.