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[Redacted]

DATE: **JAN 30 2013** OFFICE: LAS VEGAS, NV

[Redacted]

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and Section 212(i) of the Act, 8 U.S.C. § 1182(i)

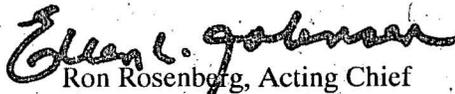
ON BEHALF OF APPLICANT:

[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,

  
Ron Rosenberg, Acting Chief  
Administrative Appeals Office

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**DISCUSSION:** The waiver application was denied by the Field Office Director, Las Vegas, Nevada, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, and the underlying application is approved.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. She was also found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa and admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 21, 2009.

The AAO affirmed that the applicant did not establish her spouse would suffer extreme hardship given her inadmissibility and consequently dismissed the appeal. *See AAO Decision*, May 1, 2012.

On motion, counsel for the applicant submits a brief in support, statements from the applicant and her spouse, medical, employment, and financial records, and documentation on country conditions in the Philippines. In the brief, counsel asserts that the applicant's spouse would experience extreme hardship upon separation from the applicant due to financial, medical, and family-related reasons. Counsel moreover claims the spouse would also suffer extreme hardship upon relocation to the Philippines due to his ties in the United States, dangerous country conditions in the Philippines, and the spouse's employment poor employment prospects.

The record includes, but is not limited to, the documents listed above, statements from the applicant and her spouse, letters from family, friends, community members, and employers, financial documents, medical records, a psychological evaluation, police clearance certificates, certificates of achievement, evidence on country conditions, evidence of birth, marriage, residence, and citizenship, photographs, and other applications and petitions filed on behalf of the applicant. 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.

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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.

The applicant admitted she used a passport in the name of "[REDACTED]" to obtain a multiple-entry B-1/B-2 visa on June 5, 1992, and that she used this visa to obtain admission into the United States on July 9, 1992. The applicant stated she stayed past the date of her authorized stay, and obtained an October 1, 1992 arrival stamp from the Philippines to make it appear as if she did not overstay her period of admission. The applicant also admitted she returned to the Philippines in 1999, and was admitted to the United States on October 25, 1999 using the initial B-1/B-2 visa in the name of [REDACTED].<sup>1</sup> Inadmissibility is not contested on motion. Therefore, the AAO affirms that the applicant procured a visa and admission to the United States through fraud or misrepresentation and is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

**(B) ALIENS UNLAWFULLY PRESENT.-**

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

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(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

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<sup>1</sup> Furthermore, the record reflects that the applicant obtained a fraudulent I-551 stamp in her own passport, dated July 5, 1992, to obtain a social security card in the United States.

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant was admitted to the United States pursuant to a B-1/B-2 nonimmigrant visa on July 9, 1992, and remained past the date of her authorized stay until she returned to the Philippines in 1999. Inadmissibility is not contested on appeal. As such, the AAO also affirms that the applicant accrued more than one year of unlawful presence, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of her misrepresentation and unlawful presence is her U.S. Citizen spouse.

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 spouse claims his financial obligations, the applicant’s medical conditions, and raising two young children would cause him significant hardship if the applicant returned to the Philippines. He states that he and the applicant now have a daughter who is approximately three years old, and that their young daughter, along with their 13 year old daughter, requires constant time and attention. The spouse adds that taking care of their children as well as meeting their financial obligations have been made much more difficult since the applicant was diagnosed with breast cancer. A letter from the spouse’s physician indicates the applicant has a medical history of breast cancer, chemotherapy, renal mass and nodules, anemia, and a cyst. Medical records are submitted in support. The spouse claims that the applicant’s medical problems have exacerbated his depression, and he worries about how he could take care of their two children if something happened to the applicant. A psychological evaluation submitted with the appeal indicates that the spouse has anxiety, severe depression, and some anger issues. In addition to emotional hardship, the applicant’s spouse contends without the applicant’s income, he would have difficulties meeting his financial obligations, and that a mortgage lender foreclosed on his home. Paystubs, copies of household bills, as well as documentation on rental income and foreclosure proceedings are submitted on motion.

The applicant’s spouse asserts that even if he were to relocate to the Philippines, at his age he would have difficulty finding employment. Documentation on employment rates in the Philippines is submitted in support. The spouse additionally states that he has not been back to the Philippines since 1994, and he has no family or other ties there. He claims that all his ties are in

the United States, including his mother and five of his six siblings. The applicant's spouse adds that he would be unable to pay for the applicant's medical treatments in the Philippines, which would result in a death sentence for the applicant, leaving the spouse alone to take care of the children. The spouse moreover asserts that life in the Philippines is dangerous, especially for U.S. Citizens like him, and he does not want his children to be exposed to that lifestyle. A U.S. Department of State travel warning is submitted in support, as is a report on country conditions in the Philippines.

The applicant has submitted sufficient evidence, including documentation on her spouse's income and expenses, to demonstrate that her spouse would have difficulties meeting his financial obligations without her income. Although the record indicates the applicant earns less than the spouse, she has shown that her income supplements the spouse's ability to pay for other expenses such as groceries. Furthermore, the applicant has shown that her spouse's home has been foreclosed upon, and that he may still be responsible for the balance of the loan. Given the evidence submitted on the spouse's foreclosure and his finances, the applicant has shown the spouse would experience financial hardship without the applicant present.

The applicant has moreover shown her spouse's financial situation is exacerbated by her medical bills. The record establishes that the applicant is undergoing treatment for breast cancer, and that she has also suffered from other medical conditions. Assertions that the spouse is having further emotional difficulties due to the applicant's health issues, above and beyond the anxiety, depression, and anger issues discussed in the psychological evaluation is therefore supported by documentation of record. The AAO also notes that raising two young children without the applicant present may add to the spouse's hardship upon separation.

The AAO therefore finds there is sufficient evidence of record to demonstrate that the spouse's 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, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without her spouse.

The record moreover contains sufficient evidence to establish the applicant's spouse will experience extreme hardship upon relocation to the Philippines. Although the spouse is a native of the Philippines, the applicant has shown he has more family ties in the United States, and that he has not returned to the Philippines since 1994. Moreover, the record indicates that the applicant will most likely be unable to access sufficient medical care in that country given her medical conditions, which supports the spouse's assertions of emotional hardship upon relocation. Furthermore, documentation of record suggests that the spouse may have difficulty finding employment in the Philippines given his field of expertise. The record further reflects that the applicant's spouse has a history of lengthy employment and business ties in the United States.

In light of the evidence of record, the AAO finds the applicant has established that her spouse'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, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the Philippines.

Considered in the aggregate, the applicant has established that her U.S. Citizen spouse 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.

The unfavorable factors include the applicant's unlawful presence, her multiple misrepresentations, and her employment in the United States without authorization. The positive factors in the applicant's case include the extreme hardship to her qualifying relative, some evidence of hardship to the applicant's U.S. Citizen children, her lack of a criminal record, and documentation of good moral character as stated in letters from family and friends.

Although the applicant's violations of immigration law cannot be condoned, 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 her burden. Consequently, the motion is granted, and the underlying application is approved.

**ORDER:** The motion is granted, and the underlying application is approved.