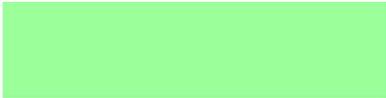


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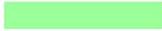


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: **MAR 14 2013**

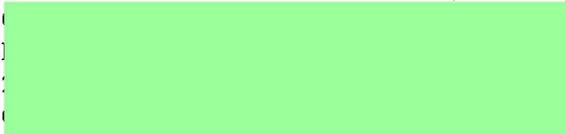
Office: LOS ANGELES, CA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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, Los Angeles, 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse 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 her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated September 15, 2011.

On appeal, counsel for the applicant asserts that the Field Office Director erred in finding the applicant inadmissible. Counsel contends that the applicant did not make a willful misrepresentation but rather was the victim of a fraud scheme in which unlicensed immigration consultants, or notarios, filed thousands of applications containing false information without the beneficiaries' knowledge. Counsel notes that the leader of the fraud ring has been convicted of visa fraud and contends that the applicant has presented sufficient evidence to demonstrate that she was a victim of the scheme. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant and her qualifying spouse; an affidavit from a friend of the applicant who facilitated her contact with the notarios; news articles and conviction records regarding one notario the applicant claims was involved in filing her false application; medical records and a psychological evaluation regarding the qualifying spouse; financial records; country conditions information; and letters of support for the applicant and the qualifying spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, she bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

In the present case, the record reflects that on January 21, 2003, a Form I-130 petition was filed on the applicant's behalf by [REDACTED] a U.S. citizen. On the same date, the applicant submitted Form I-485, Application to Register Permanent Residence or Adjust Status and Form G-325A, both of which listed [REDACTED] as the applicant's spouse. The Form I-130 was accompanied by a marriage certificate indicating that the applicant and [REDACTED] had married in Los Angeles, California on [REDACTED]. The marriage certificate was later found to be fraudulent, as no record of the marriage existed. The record also demonstrates that the applicant was married to a citizen of the Philippines, [REDACTED] from November 10, 1993 to October 29, 2004. The applicant married her qualifying spouse, [REDACTED] on December 29, 2004 and he filed a Form I-130 on her behalf on January 31, 2005. The applicant filed a new Form I-485 on the same date. Those applications were denied based on a finding that the applicant was inadmissible for providing false information in her applications filed on January 21, 2003.

On appeal, the applicant contends that she did not willfully misrepresent any facts in the applications she filed in 2003. She states that soon after she arrived in the United States, she made contact with an acquaintance she had known in the Philippines, [REDACTED] who was living in Orange County, California. [REDACTED] informed the applicant that two individuals, [REDACTED] and [REDACTED] had assisted her in obtaining work authorization and could assist the applicant as well. The applicant claims that based on [REDACTED] advice, she contacted [REDACTED] by phone and agreed to pay her \$8,000 to obtain an H-1B visa. The applicant agreed that she would only communicate with [REDACTED] by phone and would exchange all correspondence with [REDACTED] through [REDACTED]. The applicant proceeded to send a \$4,000 deposit to [REDACTED] who forwarded the funds to [REDACTED]. Shortly thereafter, the applicant received in the mail blank Forms I-485 and I-765 and an inkpad to provide a fingerprint. The applicant alleges that she completed the forms truthfully, listing her then-spouse, [REDACTED] and her daughter, [REDACTED] both of whom were living in the Philippines at that time. She states that she mailed the completed forms to [REDACTED] who forwarded them to [REDACTED] to be filed with USCIS.

The applicant states that [REDACTED] never provided her with copies of the forms that were submitted. She did not receive a receipt form or any other correspondence from USCIS. Despite many attempts over the next year, she was unable to contact [REDACTED] to obtain an update regarding her applications. She eventually concluded that [REDACTED] had defrauded her by taking her money without filing any applications. The applicant asserts that she would not have signed any forms listing [REDACTED] as her spouse because she did not know that individual and was married to [REDACTED] whom she knew could not petition for her as a citizen of the Philippines. She indicates that she did not know a family-based petition was being filed on her behalf but instead believed that she was applying for an H-1B visa. She also asserts that she did not agree that any false information be provided in her applications and did not become aware that false information had been filed until much later.

In support of her claims, the applicant submitted an affidavit from [REDACTED], [REDACTED], the individual who suggested that the applicant contact the notarios. [REDACTED] states that she attended church with [REDACTED] who offered to assist her with obtaining work authorization. [REDACTED] met in person with [REDACTED] and [REDACTED] and they helped her prepare her applications. [REDACTED] later received her work authorization, so she recommended that the applicant contact [REDACTED] and [REDACTED] for assistance. [REDACTED] claims that she then facilitated the communication between the applicant and [REDACTED] and allowed the applicant to use [REDACTED] address for correspondence with USCIS. [REDACTED] also forwarded the applicant's money and completed paperwork to [REDACTED]. She states that after the paperwork was filed, she lost touch with [REDACTED]. [REDACTED] also asserts that her own application for adjustment of status was initially denied based on fraud in the application [REDACTED] and [REDACTED] had filed on her behalf, but that she was able to demonstrate that she was not responsible for the fraud.

Additionally, the applicant submitted news articles and conviction records regarding a visa fraud scheme conducted by several individuals in Orange County, California, including a man named [REDACTED]. The news articles state that [REDACTED] and two other individuals were accused of filing over 1,000 applications between 2001 and 2003 which falsely indicated that the beneficiaries were married to U.S. citizens. The conviction records indicate that [REDACTED] was convicted on October 6, 2005 of False Statement in Visa Applications, in violation of 18 U.S.C. § 1546.

The applicant contends that her affidavit, the affidavit of [REDACTED] and the information regarding the conviction of [REDACTED] demonstrate that the applicant was a victim of fraud and that she did not willfully provide false information in her applications. However, the record contains Forms I-485, G-325A, and I-765, dated January 5, 2003, all of which contain false information and bear the applicant's original signature. Specifically, Forms I-485 and G-325A both list [REDACTED] as the applicant's spouse. Form I-765 lists the same address for the applicant as that which is listed for [REDACTED] on the Form I-130. Although the applicant claims that she was not aware that false information was being filed, her original signature is on several documents containing false information. Therefore, the AAO finds that the applicant has failed to meet her burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See* section 291 of the Act; *see also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978); *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967). Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure an immigration benefit through fraud or misrepresentation of a material fact. She is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

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.

Pursuant to section 212(i) of the Act, 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. Hardship to the applicant or her daughter can only be considered insofar as it causes extreme hardship to her qualifying spouse. 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 of Immigration Appeals (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 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).

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.

The qualifying spouse notes that he has a history of bladder cancer, basal carcinoma, and numerous pre-cancerous lesions. He states that he must attend periodic checkups to prevent recurrence of his cancer. The qualifying spouse also indicates that he has a herniated disc in his lower back, arthritis in his lower spine, back pain, and numbness in his legs and feet. He asserts that he has difficulty walking, maintaining his balance, and standing after sitting or lying down. He states that these problems have continued despite two major spine surgeries, physical therapy, and other treatments. He contends that he relies on the assistance of the applicant and his step-daughter and that it would be very difficult for him to function without them. He states that the applicant helps him to walk, climb stairs, and get out of bed. She also handles the household tasks such as cleaning, doing laundry, cooking, and buying groceries.

The qualifying spouse also asserts that he is emotionally close to the applicant and his step-daughter and that he would be devastated if he were separated from them. He also fears that he would be unable to raise his step-daughter, a young teenager who is a lawful permanent resident, if she were to remain in the United States after the applicant's removal. He believes that his step-daughter would undergo significant emotional hardship without the support of her mother and that her resulting negative behavior would cause hardship for the qualifying spouse. He also notes that his step-daughter would lose her permanent residence if she were to relocate to the Philippines with the applicant. He also worries that he would be unable to visit the applicant in the Philippines due to his disabling medical conditions and the high cost of travel.

The qualifying spouse further notes that he would suffer hardship if he were to relocate to the Philippines with the applicant. He was born and raised in the United States and relocation

would separate him from his family and friends, his home, his pets, and his possessions. He is unfamiliar with the culture, language, and climate of the Philippines. Additionally, the qualifying spouse states that he would lose his health insurance and Medicare benefits if he were to relocate and would be unable to afford appropriate care for his medical conditions in the Philippines. He also fears that the applicant and his step-daughter would lose their health coverage and that he would struggle to afford a good education for his step-daughter.

Medical records confirm that the qualifying spouse suffers from several medical conditions. He has been evaluated for "progressive loss of balance and difficulty of walking," for which his doctor has "recommended for safety reasons, for him to have a regular caregiver or [be] assisted by his spouse with his already reduced daily activities." See *Letter from* [REDACTED] dated March 23, 2011. The same doctor notes that the qualifying spouse has "cervical and lumbar disc disease, which is a degenerative spinal condition" and for which he has undergone two major surgeries on his spine. See *Letter from* [REDACTED] dated December 3, 2007. As a result, he has experienced decreased mobility and chronic pain and it is "vitaly necessary" that he have access to the highest quality therapy and medication under the supervision of neurological surgeons. *Id.* The medical records also indicate that the qualifying spouse has received treatment for pre-malignant skin lesions and basal cell skin cancer and must attend periodic examinations. See *Letter from* [REDACTED] dated March 23, 2011. The qualifying spouse also underwent surgery to remove "a large malignant tumor of a rare type in his bladder" in 1997 and has continued to remain under the regular care of a doctor to prevent a recurrence of bladder cancer. See *Letter from* [REDACTED] dated November 1, 2007. Finally, the qualifying spouse has received treatment for depression and anxiety. See *Letter from* [REDACTED], dated March 8, 2011. A psychological evaluation in the record notes that the qualifying spouse has experienced increasing depression and anxiety in response to the applicant's immigration situation. See *Initial Evaluation Report*, [REDACTED] and [REDACTED], dated March 16, 2011.

The AAO finds that the qualifying spouse would suffer extreme hardship if he were separated from the applicant. The medical documentation in the record reflects that the qualifying spouse suffers from several serious health conditions for which he requires regular treatment and daily assistance. His doctors have recommended that he have the regular assistance of a caregiver in order to manage his difficulty with mobility and inability to complete household tasks. He currently depends on the applicant, who is an experienced home health aide, to fulfill that need. The qualifying spouse has also received medical treatment for diagnosed depression and anxiety and he relies on the applicant for emotional support. Separation from the applicant would make daily life very difficult for him for medical reasons.

Furthermore, the removal of the applicant could result in the qualifying spouse being responsible for raising his step-daughter on his own. His step-daughter is a 13-year-old who became a lawful permanent resident after moving to the United States from the Philippines as a child. Separation from her mother could result in emotional difficulties for the step-daughter which

would create hardship for the qualifying spouse. Additionally, the qualifying spouse's medical conditions would prevent him from properly caring for his step-daughter.

The AAO also finds that the qualifying spouse would suffer extreme hardship upon relocation to the Philippines. The qualifying spouse must undergo regular examinations to manage his pain, monitor his degenerative spine disease, control his depression and anxiety, and prevent a recurrence of skin and bladder cancer. The qualifying spouse is able to receive these treatments in the United States through his health insurance and Medicare, which he would lose if he were to leave the country. Traveling to the Philippines would also be difficult for him due to his spinal conditions and limited mobility. Additionally, the qualifying spouse is now 67 years old and he has lived his entire life in the United States. He has close family and friends and a home in this country. He does not speak Tagalog and is unfamiliar with the culture of the Philippines.

When considered in the aggregate, the qualifying spouse's serious medical conditions, reduced mobility, and emotional stressors would create extreme hardship for him if he were separated from the applicant or if he were to relocate to the Philippines. Therefore, the applicant has met her burden of establishing that her U.S. citizen spouse would face extreme hardship if the applicant's waiver request is denied. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996); *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999).

In that the applicant has established that the bars to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

Matter of Mendez, 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 case include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied; the fact that the applicant has a lawful permanent resident daughter who lives with her and the qualifying spouse in the United States; and the applicant's long period of residence in the United States. Additionally, the record contains several letters of support from friends and family of the applicant and the qualifying spouse. The letters indicate that the qualifying spouse has been noticeably happier since the applicant and her daughter became a part of his life. The letters also state that the applicant is a generous, kind, hard-working person of good moral character. *See Letters from* [REDACTED] [REDACTED] and [REDACTED]. The unfavorable factor in this case is the applicant's attempt to obtain admission through misrepresentations of a material fact.

Although the applicant's violation of immigration law is serious and 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 and the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.