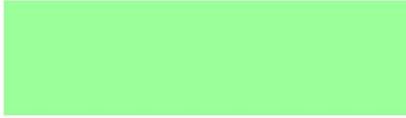




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **MAR 18 2013** Office: SAN JOSE, CA

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 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, appearing to read "Ron Rosenberg", with a long horizontal line extending to the right.

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of the Philippines who used false documents in an attempt to enter the United States. The applicant was found to be inadmissible to the United States 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 28, 2012.

On appeal, counsel for the applicant asserts the Field Office Director's decision was erroneous because it failed to consider the hardship impacts in the aggregate and inappropriately disregarded evidence in the record. *Form I-290B*, received April 25, 2012.

The record contains, but is not limited to, the following evidence: statements from the applicant's spouse; statements from the applicant; two statements from [REDACTED] pertaining to the mental health of the applicant's spouse; medical records pertaining to the applicant's spouse; statements from the applicant's spouse's son and daughter; copy of a bankruptcy filing for the applicant's spouse; copies of wage garnishment notices, bills, bank account statements, tax returns; and photographs of the applicant, her spouse and their family. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant presented false documents when entering the United States in December 2002, and thus entered the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this on appeal.

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

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(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 an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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*, 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.

On appeal, counsel for the applicant contests the Field Office Director’s conclusions in his March 28, 2012, denial. Counsel asserts that the applicant’s spouse will experience extreme physical, emotional and financial hardship upon relocation to the Philippines with the applicant, and that the record contains sufficient documentation to corroborate the applicant’s assertions of hardship impacts to her spouse. *Statement in Support of Appeal*, received May 25, 2012. Counsel explains that the applicant’s spouse suffers from depression, diabetes and thyroid issues, and struggles with alcoholism. Counsel also explains that he cannot relocate to the Philippines because he cannot get a passport due to the fact that he has been ordered by a court to pay back child support he failed to pay during a period of homelessness, and that the applicant’s spouse has already had to declare bankruptcy. Counsel notes that the applicant’s spouse has resided in the United States since the age of 8 and is now an elderly man of 61 years. He states that the applicant’s spouse is very close with his daughter and son who reside near him in the United States, and that he would not be able to find adequate health care or employment in the Philippines.

At the outset the AAO notes that the record contains substantial medical documentation for the applicant’s spouse, including medical exams and reports, post operative surgery reports and other documents. The evidence submitted is sufficient to establish that the applicant’s spouse suffers from numerous medical conditions, including the loss of his Thyroid gland, diabetes and hypertension.

The AAO also takes note of the mental health examinations in the record indicating that the applicant’s spouse suffers from Major Depression and alcoholic tendencies. In light of the

applicant's spouse's medical conditions, the presence of depression and alcohol concerns pose a heightened impact on the applicant's spouse. Based on these observations the AAO can reasonably conclude that disrupting the applicant's spouse's medical care in the United States, severing the ties with doctors and health practitioners who are familiar with him and know his history, would result in an uncommon hardship upon relocation.

The AAO also finds the fact that the applicant's spouse is under a court order to pay back missed child support payments to constitute an uncommon financial burden. Relocation to the Philippines, if the applicant were allowed to do so, would increase the applicant's spouse's urgency to find employment. In light of the fact that the applicant's spouse is 61 and suffers from serious medical conditions, the AAO finds this would constitute a uncommon and significant hardship on the applicant's spouse.

Counsel for the applicant details a range of impacts that would befall the applicant's spouse upon relocation and refers to evidence which corroborates the applicant's assertions of hardship. When the impacts discussed above are considered in the aggregate with the common impacts of relocation and other impacts described by counsel, the AAO finds that they rise to a level of extreme hardship.

With regard to hardship upon separation, counsel for the applicant asserts that the applicant's spouse suffers from several medical conditions which could be alleviated with the emotional support of the applicant, that the applicant will suffer severe mental and emotional hardship in light of his history of depression and alcoholism and that he has had to declare bankruptcy due to a heavy financial burden. *Statement in Support of Appeal*, received May 25, 2012. Counsel explains that the applicant's spouse suffers from the medical conditions discussed above, and cites to mental health exams in the record indicating that he will experience severe emotional hardship.

The record contains two examinations from [REDACTED] pertaining to the applicant's spouse. In the reports [REDACTED] discusses the applicant's spouse's background, noting a previous bout with alcoholism, and concludes the applicant's spouse is suffering from Major Depression and General Anxiety. This evidence is sufficient to demonstrate the applicant's spouse will experience an uncommon emotional impact due to separation. When the emotional hardship is considered in light of the applicant's spouse's medical conditions the AAO is persuaded that the applicant's spouse would experience significant psychological hardship due to separation.

The record also contains substantial evidence documenting the financial impact on the applicant's spouse. There are copies of court records corroborating the applicant's spouse's obligations to pay back child support, a bankruptcy filing and pay stubs illustrating wage garnishments. Thus, it is clear the applicant's spouse has a substantial financial burden. While this burden may not be directly caused by separation from the applicant, the record supports that the applicant's spouse's situation could be improved by the presence of a second income-earner or a spouse to manage household duties.

When the hardship impacts due to separation are considered in the aggregate, the AAO finds that they rise to the degree of extreme hardship.

As the applicant has demonstrated that a qualifying relative will experience extreme hardship upon relocation and separation, the AAO may now consider whether the applicant warrants a waiver as a matter of discretion.

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 section 212(h)(1)(B) 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation. The favorable factors in this case include the presence of the applicant's spouse, the hardship her spouse will experience due to her inadmissibility, the statements in the record praising her moral character and the role she plays in her spouse's life and the lack of any criminal record while residing in the United States. While the applicant's misrepresentation is a serious matter, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The field office director's decision will be withdrawn and the appeal will be sustained.

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Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.