



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

(b)(6)

DATE: **MAR 20 2013** Office: LOS ANGELES, 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:

[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,

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 District Director, Los Angeles, California. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and the appeal will be sustained.

The applicant is a native and citizen of the Philippines. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented her identity when entering the United States. She is married to a U.S. citizen and has two U.S. citizen parents. 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 failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). The AAO found that the applicant had not established extreme hardship to a qualifying relative and dismissed the appeal. *AAO Decision*, dated December 2, 2011.

On motion, counsel for the applicant asserts that the applicant's spouse's medical condition has deteriorated significantly since the appeal was initially filed with the AAO, and that evidence attached to the motion will demonstrate that the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received December 30, 2011.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In this case counsel for the applicant points out that the applicant's spouse's medical condition has worsened since the applicant initially filed her appeal to the Field Office Director's denial. The record has been supplemented with additional documentation supporting counsel's assertion and further explaining prior assertions of hardship.

As the motion properly states new facts to be provided and is supported by affidavits, the AAO finds that it meets the requirements of a Motion to Reopen.

The record includes, but is not limited to, a brief from counsel: statements from the applicant; a statement from the applicant's spouse; a statement from the applicant's mother and father; medical records pertaining to the applicant's spouse, mother and father; financial records, including tax returns, copies of bills and other financial obligations, pay stubs for the applicant and an employment letter for the applicant; statements from [redacted] pertaining to the medical conditions of the applicant's parents and the medications they have been prescribed; a statement

from [REDACTED] dated January 26, 2012, pertaining to the health conditions of the applicant's spouse; a Work Status Report by [REDACTED] diagnosing the applicant's spouse with Progressive Dementia; work related documents for the applicant's spouse; 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 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 the finding of inadmissibility on appeal.

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

- (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.

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 the applicant or any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and parents are 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-Morales*, 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.

Counsel explains on motion that the applicant's spouse suffers from Dementia, has been forcibly retired from employment and requires the presence of the applicant to manage his daily health care. *Brief in Support of Appeal*, received December 20, 2012. Counsel explains that the applicant works to provide financial support for her spouse and parents, including the in-home care required by the medical conditions of her spouse. Counsel further explains that the applicant's parents reside with her, that they are elderly and suffer from numerous medical conditions and also rely on the applicant physically.

The applicant's spouse submitted a statement in 2001 explaining that he suffered from several medical conditions, and that he would be unable to meet his financial obligations without the assistance of the applicant.

The applicant has submitted a statement re-iterating counsel's explanations, noting that she is the only one available to provide for transportation, food and housing for her spouse and her parents. *Statement of the Applicant's Spouse*, dated January 25, 2012. The applicant's parents have submitted statements on appeal detailing the assistance they receive from the applicant and discussing the hardships they will experience without her assistance.

An examination of the record reveals significant medical documentation establishing that the applicant's spouse suffers from Dementia. The record indicates that he was referred to a medical doctor for examination due to memory loss and after having fallen and breaking his nose. *Work Status Report*, dated February 26, 2009. The record also contains a document from the applicant's spouse's employer stating that he was being medically retired. Other medical documentation in the record, including a statement from [REDACTED] corroborate that the applicant's spouse, who is now 87-years-old, needs constant medical care to protect him from wandering off due to Dementia or to monitor symptoms from numerous other conditions such as high blood pressure. The applicant asserts that she is the one who is best situated to manage her spouse's care and the AAO agrees. Based on the evidence in the record the AAO can determine that the applicant's spouse would experience a significant medical hardship if the applicant were removed from the United States.

The record contains significant financial documentation, including tax returns, employment letters and copies of bills and other financial obligations. The AAO finds this evidence sufficient to demonstrate that the applicant's spouse, based on the loss of the applicant's revenue, would experience a substantial financial impact if the applicant were removed.

When these impacts are considered in the aggregate, the AAO finds them to rise above the common impacts of relocation to a degree of extreme hardship.

Conversely, the AAO recognizes that the presence of serious medical conditions in the applicant's spouse, including a detailed regimen of prescription medications and coverage by health insurance in the United States, constitutes a significant and uncommon impact upon relocation. Having to sever her spouse's ties with his doctors, family members, health insurance and support network in order to

relocate would result in a significant and uncommon physical hardship. When considered in light of the applicant's spouse's age and other common factors of relocation, the AAO can determine that he would experience extreme hardship on relocation.

As the applicant has established that a qualifying relative will experience extreme hardship both upon relocation and separation, the AAO will now determine whether she warrants a waiver as a matter of discretion.

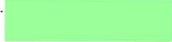
In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 the applicant's spouse will experience due to her inadmissibility the presence of the applicant's family and the lack of any criminal record while residing in the United States. Although the applicant's misrepresentation is a serious matter, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised.

(b)(6)


Page 7

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she 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 application will be approved.

ORDER: The motion is granted, the prior decision of the AAO is withdrawn, and the application is approved.