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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

Date: **MAY 14 2013**

Office: NEWARK, NJ

FILE: 

IN RE: Applicant: 

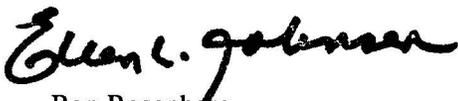
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion. The matter is now before the AAO on a second motion. The motion will be granted and the underlying waiver application will be approved.

The record reflects that 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)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, finding that although the applicant established that his wife would suffer extreme hardship if she remained in the United States, there was insufficient evidence in the record to show that she would suffer extreme hardship if she relocated to the Philippines. The AAO affirmed the decision on motion.

Counsel now files a second motion to reopen, contending there is new evidence to be considered in the case and that the applicant's wife would suffer extreme hardship if she relocated to the Philippines because she is now suffering from renal failure.

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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's previous decisions, the record also contains, *inter alia*: copies of the applicant's wife's medical records; copies of tax returns and other financial documents; a letter from the Social Security Administration; and an article addressing kidney disease in the Philippines.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the district director had previously found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Specifically, the record shows that the applicant entered the United States in 1994 using another person's passport. Counsel does not contest this finding of inadmissibility on motion.

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.

After a careful review of the entire record, the AAO finds that the applicant’s wife, Ms. [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The AAO previously found that if Ms. [REDACTED] remains in the United States, she would experience extreme hardship. The AAO will not disturb that finding. The AAO also finds that if Ms. [REDACTED] relocated to the Philippines to be with her husband, she would suffer extreme hardship. According to counsel, since the filing of the previous motion, the applicant’s wife’s medical condition has deteriorated significantly. Counsel contends she has suffered renal (kidney) failure and is now undergoing dialysis treatment three times per week, and is blind in one eye due to poorly controlled diabetes. In addition, counsel contends Ms. [REDACTED] is no longer able to work, is permanently disabled, and is receiving social security disability benefits. Counsel contends that that her medical condition prevents her from relocating to the Philippines where dialysis treatment, if available, is so expensive most individuals cannot afford it.

Copies of Ms. [REDACTED]’s medical records submitted on motion corroborate counsel’s contentions regarding her medical conditions. The medical records indicate Ms. [REDACTED] has been diagnosed with diabetes, end-stage renal disease, chronic and severe hypertension, hypothyroidism, and chronic anemia. The medical records indicate she is now on hemodialysis three times a week. In addition, a letter from the Social Security administration confirms that Ms. [REDACTED] is receiving monthly benefits of \$2,193. Furthermore, a letter from Ms. [REDACTED]’s physician states that she has diabetic retinopathy in both eyes, neovascular glaucoma, and blindness in her left eye. According to the physician, she gets injections in both eyes every five weeks. Based on this new evidence, the AAO recognizes that relocating to the Philippines would disrupt the continuity of health care Ms.

█ has been receiving for her numerous, serious medical problems. Moreover, the AAO acknowledges the article submitted on motion, "The Burden of Kidney Disease in the Philippines," which describes how a quarter of Filipino patients with kidney failure died last year without receiving any treatment. According to the article, the majority of Filipinos cannot afford dialysis for more than one year and most do not have any insurance. Considering the unique factors of this case cumulatively, the AAO finds that the hardship Ms. █ would suffer if she relocates to the Philippines is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Ms. █ faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and periods of unauthorized presence and employment in the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including his U.S. citizen wife, U.S. citizen son, and lawful permanent resident daughter; the hardship to the applicant's entire family if he were refused admission; the applicant's exemplary work as a Certified Nursing Assistant that earned him the "Employee of the Year" award in 2000 and the "Nurse Aide of the Year" award in 2003; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

ORDER: The motion will be granted and the underlying waiver application is approved.