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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

[REDACTED]

Date: DEC 17 2014

Office: SAN FRANCISCO

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".

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Ron Rosenberg
Chief, Administrative Appeals Office

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

The record reflects that 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 procuring admission to the United States through fraud or misrepresentation. The applicant does not contest the finding of inadmissibility, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. Citizen spouse, children, and mother.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 13, 2014.

The current appeal is based on a Form I-601 waiver application filed by the applicant on July 19, 2013. The applicant initially a Form I-601 waiver application on February 22, 2006 in conjunction with an Application to Adjust Status (Form I-485) as a derivative to an Immigrant Petition for Alien Worker (Form I-140) filed on behalf of his spouse. The District Director, Los Angeles, California, denied that waiver application concluding that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. *See Decision of the District Director* dated September 12, 2006. We dismissed an appeal of the denial. *See Decision of the AAO* dated August 26, 2009. The applicant filed a Motion to Reopen on September 24, 2009, however subsequent to that motion the applicant's spouse became a naturalized U.S. Citizen, and on April 18, 2011, counsel requested that the motion be withdrawn. The applicant then filed a waiver application in conjunction with an application to adjust status pursuant to a Petition for Alien Relative (Form I-130) filed by his spouse on April 20, 2011. The Field Office Director, San Francisco, California, denied the waiver application concluding that the applicant had not established extreme hardship to a qualifying family member if he were removed from the United States. *See Decision of the Field Office Director* dated September 20, 2011. On appeal we determined that the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and although he had established extreme hardship to his U.S. citizen mother if she were to relocate to the Philippines to reside with him, he had failed to establish extreme hardship to his mother due to separation. The appeal was dismissed accordingly. *See Decision of the AAO* dated March 27, 2013.

On appeal in the present case counsel asserts that denial of the current waiver application is disproportionately based on previous decisions and that the applicant's mother has now been diagnosed with cancer. With the appeal counsel submits a brief, a statement from the applicant's spouse, letter from his mother's physician, medical documentation for the applicant's mother, and country information for the Philippines. The record contains previous briefs by applicant's counsel; affidavits from the applicant, his spouse and mother; psychological evaluations from 2009, 2011, and 2013 for the applicant and his family; financial documentation; medical documentation for the applicant, the applicant's children, and the applicant's mother; school documentation for the

applicant's children; letters of support from family and friends; and documentation submitted in support of the applicant's Form I-485 and Form I-601 waiver applications and previous appeals. 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.

Section 212(i) of the Act provides:

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.

The record reflects that the applicant entered the United States on [REDACTED] 2000, using an A-2 non-immigrant visa that belonged to another person. Based on this information the applicant was found inadmissible for procuring admission to the United States through fraud or misrepresentation. Neither counsel nor the applicant has contested the finding of inadmissibility.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and U.S. citizen mother are the only qualifying relatives in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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. As noted above, on appeal of the previous waiver application we found that the applicant's mother would experience extreme hardship if she were to relocate to the Philippines to reside with the

applicant. As such this criterion will not be addressed in the current appeal. This decision will examine whether the denial of the applicant's waiver will cause extreme hardship to his mother due to separation.

On appeal counsel states that the applicant's mother has been diagnosed with cancer. With the appeal counsel submits a statement from the mother's doctor, dated April 15, 2013, indicating that she was treated with a left mastectomy and sentinel lymph node biopsy in [REDACTED] and is undergoing ongoing treatment for breast cancer. The statement lacks further detail, but counsel asserts that it can be assumed that someone diagnosed with breast cancer will be closely monitored and have various treatments. The applicant's mother states that since being diagnosed with cancer she is taking oral chemo drugs and is closely monitored for cancerous cells. She states that her doctor told her that she has an increased chance of cancer coming back because of her family history of cancer. The applicant states that his mother is fragile and that he monitors her medication and takes her to medical checkups, to church, and on short drives. He states that his mother needs his help for stamina to fight the disease and that she would be devastated if he leaves because he is the oldest child and is mainly responsible for her. The applicant's spouse states that the applicant's mother needs emotional support fighting cancer and that the applicant spends more time caring for her than other family members.

The applicant's mother states that she has other age-related medical problems like osteoporosis, arthritis, and hearing loss, as well as occasional headaches. Counsel asserts that the applicant's mother is in deteriorating health and that medical documentation shows she suffers from osteoporosis along with bouts of cloudy vision, dizziness, vertigo, intermittent palpitations, chest pain, and back pain. Medical documentation submitted to the record shows medical visits and diagnoses for the applicant's mother from 2007 to 2014. The applicant's mother states that she has a close relationship with the applicant and that no one cares for her like he does, as he takes her to doctor appointments and therapy, buys medicine, explains to her what doctors want her to do, helps her cook and do laundry, drives her to church, and takes her on drives to get fresh air and lift her spirits. Counsel also asserts that the mother's medical condition makes it nearly impossible for her to travel the long distance to see the applicant if he were in the Philippines.

The psychological evaluations of the applicant's family, dated September 10, 2009 and March 18, 2011, indicate that the applicant's mother was diagnosed of Major Depression, moderate, and Generalized Anxiety Disorder. Another evaluation, dated April 16, 2013, states that the family was experiencing increased physical and psychological problems since the 2011 visit and that the applicant's mother appeared more anxious. The later evaluation notes that the applicant's mother counts on the applicant to take her to medical appointments, which are more critical since she contracted cancer, and that the applicant takes her to church for spiritual support.

Denials of previous waiver applications noted that the applicant's mother lives primarily with a daughter in the United States rather than the applicant. Counsel had noted that even though the applicant's mother lives with the applicant's sister, the sister was unable to care for her because she worked full time, was going through a divorce, and was preoccupied with her own son's multiple problems including psychological and behavioral difficulties. In the current appeal counsel states

that although the applicant's sister is now in a better position to care for their mother, the applicant still provides a huge help, and if he is removed from the United States, his mother might never see him again.

Given the mother's age, recent diagnosis of cancer, and other ongoing medical issues that would make it difficult for her to visit the applicant, we find the evidence considered in the aggregate shows that she would experience extreme hardship if separated from the applicant. The record shows that, although the applicant's mother has other family members to provide physical assistance, she relies largely on the applicant for emotional support and help with her daily activities as she combats cancer.

As we find the record establishes extreme hardship to the applicant's mother if this waiver application is denied, no purpose would be served in evaluating hardship to the applicant's spouse, also a qualifying relative.

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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The

equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen mother, spouse, and children would face if the applicant is not granted this waiver; the applicant's support from family and friends in the United States; his periodic professional employment; and his apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's misrepresentation to enter the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.