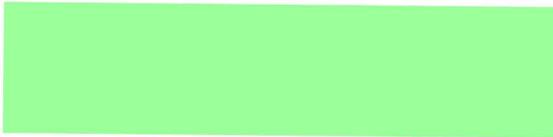


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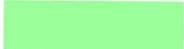


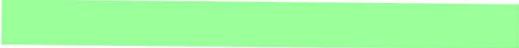
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



Date: NOV 24 2014

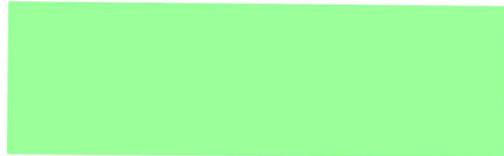
Office: LOS ANGELES

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application, which 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 pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the beneficiary of a spousal Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside with her husband in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, January 16, 2014.

On appeal, counsel for the applicant contends that USCIS failed to consider all of the hardship evidence regarding the applicant's spouse and mother and erred in concluding that the qualifying relatives would not suffer extreme hardship as a result of the applicant's inadmissibility. In support, counsel provides a brief and resubmits evidence offered in support of the Form I-601, including medical information, financial information, supportive statements, country condition information, and photographs. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 [...].

The field office director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure permanent residence through fraud or willful misrepresentation, by claiming on the Form I-130 filed by her father to be single when she was already married. Although the applicant was, in fact, single upon the September 23, 1988 Form I-130 filing, the record reflects that, having married in 1991, she misrepresented her status as single on an April 5, 1995, Application to Adjust Status (Form I-485). The applicant does not contest her inadmissibility and thus requires a waiver in order to remain in the country as a permanent resident.

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 mother are both qualifying relatives 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the evidence on the record establishes that the cumulative effect of problems impacting her mother represents hardship that rises to the level of “extreme.” The record shows that her 82-year-old mother immigrated with her husband in 1988, naturalized in 1996, and was widowed when her husband of 50 years died in [REDACTED]. None of her 10 siblings remain in the Philippines, and of the three still living, two are in Canada and one in the United States. All six of her children are in this country (four naturalized citizens, one lawful permanent resident, and the applicant), along with a dozen grandchildren and several great grandchildren. The applicant’s mother reports having no close relatives remaining in the Philippines.

The applicant also claims that her mother’s numerous medical conditions place her health at risk where relocation would sever relationships with medical professionals, including her primary care doctor of over 25 years, her kidney specialist, and her ophthalmologist. Her doctors indicate that she suffers from serious medical conditions, including end stage kidney disease, uncontrolled hypertension affecting her heart and kidney, overactive thyroid, high cholesterol, degenerative joint disease/arthritis of the spine, gout, and chronic anemia. There is evidence she has been treated for glaucoma in both eyes, is developing bilateral cataracts, and is expected to require dialysis due to impaired kidney function. She is also under the care of a cardiologist and gastroenterologist. The evidence reflects that she has lived with the family of the applicant’s elder sister since being widowed in [REDACTED]. Thus, in addition to depriving the applicant’s mother of contact with relatives nearby and the community she has called home for many years, relocating would sever ties with her many doctors, return her to a country where she has few remaining ties, and shift to the qualifying relative many treatment costs currently covered by Medicare. As her doctors have advised her against any further long distance travel, and where the applicant would be unable to visit her mother in the United States, the applicant’s mother asserts she would have to accompany the applicant back to the Philippines, to avoid never seeing her daughter again. However, she states that leaving the rest of her family in the United States would be too much to bear, as family – and associated weddings, births, and graduations – is all she lives for now. We conclude that the hardship this qualifying relative would experience if she relocated to the Philippines to be with her daughter goes beyond those hardships ordinarily associated with inadmissibility or exclusion.

Regarding the claim of hardship due to separation, there is evidence showing the emotional and medical difficulties likely to result from the applicant's departure. Supporting the applicant's mother's emotional hardship claim are her own statements, evidence of the applicant's role as a treatment provider for her mother, and indications that departure of her youngest child would have a severe psychological impact. Due to the permanence of the separation, where her doctors warn that travel to the Philippines would be life-threatening, the applicant's mother likens the psychological impact of losing her daughter to the severe depression she suffered upon her husband's death. The evidence shows that, although the applicant's mother has resided since that time with a daughter other than the applicant, the applicant has shared care responsibilities involving dressing and transporting their mother to medical appointments, preparing meals, running errands, and ensuring she takes her prescribed medications. The applicant also lived with her mother and the applicant's sister's family until the applicant moved out in 2011 after marrying. Further, the applicant's mother states that since her other daughter has returned to school, the applicant's caregiver role has increased, even as the mother's declining mobility and memory increase her need for assistance.

Regarding financial hardship, documentation indicates that the applicant's departure would cause her mother problems. Although the qualifying relative recognizes that residing with a family member spares her many costs of living alone, there is evidence that the applicant will need to be replaced as a part-time caregiver due to other commitments of the daughter with whom she lives and her other adult children. Where the qualifying relative's only financial resource is Supplemental Security Income (SSI), her ability to afford to outside help is limited. Based on the evidence, we conclude that the applicant's inability to remain in the United States would make it difficult for her mother to meet her financial obligations on her own without even more assistance from family members. Further, as the record contains a prognosis that her conditions are chronic and degenerative in nature, including stage IV kidney disease expected to cause her to require dialysis in the near future, the evidence supports the qualifying relative's fear that the applicant's absence may require her to move to an institutional setting for care.

For all these reasons, the cumulative effect of the emotional and financial hardships a qualifying relative will experience due to the applicant's inadmissibility rise to the level of extreme. We conclude based on the evidence provided that, were her mother to remain in the United States without the applicant due to her inadmissibility, she would suffer hardship beyond those problems normally associated with family separation. As we find the applicant to have established her mother would experience extreme hardship if she is denied a waiver, we need not address whether the applicant established extreme hardship to her husband, the other qualifying relative in this case.

The documentation on record, when considered in its totality, reflects the applicant has established that her U.S. citizen mother would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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).

We 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 matter are the hardships to the applicant's mother, spouse, and children if the applicant returns to the Philippines, regardless of whether they join the applicant there or remain here; the applicant's history of compliance with the immigration laws before and after the violation for which a waiver is sought and lack of any criminal record; lengthy U.S. residence, presence of lawfully resident family members, and home ownership; and history of gainful employment, reporting income, and paying taxes. The unfavorable factors in this matter concern the applicant's misrepresentation of her marital status in her first application for permanent residence.

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

ORDER: The appeal is sustained