



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 22 2014** Office: SANTA ANA, 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:

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

NON-PRECEDENT DECISION

Page 2

DISCUSSION: The Field Office Director, Santa Ana, California, denied the waiver application and the matter 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 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), and § 212(a)(9)(A)(i) of the Act, § 1182(a)(9)(A)(i). She is the spouse of a U.S. citizen and has two U.S. citizen children. 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 husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 28, 2014.

On appeal, counsel for the applicant asserts the director failed to consider important evidence and failed to consider the hardships to the applicant's spouse in an aggregate context. Counsel also asserts that the record establishes the applicant's spouse would experience extreme hardship.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant, her spouse and their family members; tax returns for the applicant; a psychological report for the applicant's spouse; medical records submitted in conjunction with the psychological report for the applicant's spouse; a compensation statement for the applicant; checking and savings account statements; copies of bills related to the financial obligations of the applicant and her spouse; photographs of the applicant, her spouse and their two daughters; and background articles on the labor, employment and poverty issues in the Philippines.

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.

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.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.- Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record indicates that the applicant attempted to enter the United States in April 1998 by using the passport of another person. She was detained and removed pursuant to section 235(b)(1) of the Act. On July 22, 2000 the applicant returned to the United States on a C-1 Transit Visa purportedly on her way to Brazil. She did not continue onto Brazil and remained in the United States. As the applicant attempted to enter the United States by misrepresenting her identity she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

In addition, the applicant was removed from the United States in April 1998 and re-entered the United States within five years of that removal. She is therefore inadmissible pursuant to section 212(a)(9)(A) of the Act and requires permission to reenter the United States.

NON-PRECEDENT DECISION

Page 4

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (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.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel for the applicant asserts the applicant's spouse will experience extreme emotional and financial hardship. Counsel explains that the applicant's spouse had a rough childhood and has struggled with substance abuse as an adult. Counsel explains that the applicant has been diagnosed with bi-polar disorder and would be particularly susceptible to the emotional impacts of separation of his spouse. Counsel also explains that the applicant's spouse has been struggling with substance abuse issues, has only recently returned to school to obtain his G.E.D. certificate and has struggled to find employment for the last two years. As such, counsel asserts, the applicant is the primary source of income for the applicant and their two daughters.

The applicant's spouse has submitted a statement and explains that he has two daughters with the applicant and that she has been the driving force behind his recovery and stability. He states that he would be lost without her, and that he would be unable to adjust to life in the Philippines.

The record contains a psychological report on the applicant's spouse. The report states that the applicant's spouse's medical history was reviewed and that two interviews with the applicant's spouse were conducted to evaluate the potential impact of separation from the applicant. The report discusses the applicant's spouse's childhood with an alcoholic father, dropping out of high school and running away from home to live with his sister at the age of fourteen. The report also discusses the applicant's spouse's struggle to remain sober and the stabilizing impact the applicant has had on the his life, and the fact that any separation would greatly impact the applicant's spouse and produce a moderate risk of suicide. The report notes that the applicant was previously prescribed Geodon, Trileptal and Zyprexa, anti-depressant medications, and concludes that the applicant's spouse suffers from Bipolar I Disorder, Most Recent Episode Depressed, Moderate. The record contains other documents in the form of clinicians notes pertaining to the mental health issues of the applicant's spouse.

Counsel asserted that the applicant was the primary source of income for the family, and in this regard the record contains copies of tax returns and earnings statements. The tax returns and income statements from her employer indicate that the applicant's income constitutes the primary source of income for the applicant and her family. If the applicant were removed the family would lose its primary source of income, a financial hardship for the applicant's spouse. The record contains copies of a lease and other bills demonstrating that the applicant's spouse would be responsible for

NON-PRECEDENT DECISION

Page 6

financial obligations if the applicant were removed. Although the record does not indicate the applicant's spouse is physically incapable of seeking employment, his psychological history, substance abuse problems and prior work history indicate that he would struggle to find stable employment sufficient to meet his family's financial obligations.

Based on the evidence contained in the record, the psychological and financial hardships on the applicant's spouse due to separation would rise to the level of extreme hardship.

Counsel for the applicant asserts that both the applicant and the applicant's spouse would have problems finding employment in the Philippines. The applicant's spouse has stated that he would be lost if he relocated to the Philippines with his spouse.

The record indicates that the applicant's spouse has resided in the United States his entire life. As noted above, the applicant's spouse also has a history of mental illness and substance abuse. The psychological report submitted into the record indicates that the applicant's spouse would not adjust well to a life in the Philippines. If the applicant's spouse were to relocate to the Philippines it would disrupt the continuity of his medical care with the doctors and mental health practitioners familiar with his condition. In addition, based on the applicant's spouse's mental health condition he would experience a heightened emotional and psychological impact due to relocation.

The record contains background materials on the labor and employment conditions in the Philippines, as well as an article discussing poverty in the country. Although no single factor upon relocation could be considered extreme, when the hardships are considered in the aggregate, particularly the psychological impact on the applicant's spouse, they rise to the level of extreme hardship.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

The unfavorable factors in this case include the applicant's misrepresentation and re-entry into the United States prior to the expiration of her five year bar, her failure to abide by the stipulations of her transit visa and periods of unauthorized presence. The favorable factors in this case include the presence of the applicant's spouse and U.S. citizen children, the hardship the applicant's spouse would experience due to her inadmissibility, the letters in the record discussing the applicant's moral character and the lack of any criminal record.

NON-PRECEDENT DECISION

Page 7

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. 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 and the appeal will be sustained.¹

ORDER: The appeal is sustained and the Form I-601 is granted.

¹ As previously noted, the applicant remains inadmissible under section 212(a)(9)(A) of the Act and requires permission to reapply for admission. The current record does not contain an approved Form I-212, Application for Permission to Reapply for Admission.