



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: FEB 12 2015

Office: HONOLULU

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Honolulu, Hawaii, denied the waiver application, the Administrative Appeals Office (AAO) dismissed a subsequent appeal, and the matter is before the AAO on motion. The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.

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 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.

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 the Field Office Director*, September 27, 2013. On appeal, the AAO also concluded the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, January 14, 2013.

On motion, filed on February 11, 2013 and received by the AAO on September 8, 2014, the applicant asserts that she provided sufficient evidence to meet her burden of showing that extreme hardship to her husband would result from her inability to remain in the United States and that the AAO erred in determining that her husband would suffer extreme hardship only by relocating to the Philippines, but not from remaining here without her. In support, the applicant provides a brief with exhibits, including an updated physician statement, an updated statement from her husband, and supportive statements. The record contains documentation including, but not limited to: medical records; country condition and medical information; financial evidence; birth, death, marriage, and naturalization certificates; affidavits of the applicant; support letters; 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 record reflects that the applicant used the passport of another person to procure admission to the United States on or about October 19, [REDACTED]. The applicant does not dispute that she is inadmissible under the Act for fraud and misrepresentation, and thus requires a waiver of inadmissibility. The applicant asserts on motion that USCIS erred in concluding she had not met her burden of showing that failure to grant her a waiver will cause a qualifying relative extreme hardship.

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 the applicant's children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawfully resident mother is the only qualifying relative, as the record shows that her husband lacks lawful status. 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).

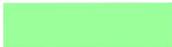
However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Having determined in our prior decision that relocating to the Philippines would cause the applicant’s husband extreme hardship, we turn to the applicant’s claim that her husband would likewise suffer extreme hardship were she unable to remain living with him here.

Regarding hardship due to separation, we find on de novo review that the applicant has established the impact of her absence on her 64-year old husband would rise to the level of extreme. There is evidence that he has at least a 15-year history of medical problems, including hypertension and illnesses of the liver (enlargement, cirrhosis, and chronic hepatitis), as well as psychological ailments (depression and extreme anxiety). Medical records reflect that he has since 2000 been under care of specialists for liver disease stemming from a history of alcohol abuse and that the breakup of his first marriage around the same time caused him to suffer clinical depression for which his personal physician has been treating him with medication since before 2010. Supportive letters by his doctor and family members state that his psychological condition makes him dependent upon others to assure he maintains a proper diet and takes prescribed medications. The evidence shows that, whereas an older sister was responsible for seeing he was properly evaluated for medical and psychological issues arising between his [REDACTED] separation from his first wife and [REDACTED] divorce, neither she nor any other relative is available to help monitor his emotional and physical condition and assure compliance with his treatment regimen. Since marrying the applicant in [REDACTED] he has become dependent on her to take him to regular medical appointments, as well as to assure his compliance with prescribed treatments. His personal physician states that his wife’s absence would likely cause a failure to take the medication on which his continued health and ability to work depend. We note that, although his wife’s [REDACTED] son is not a qualifying relative, statements from the spouse and stepson indicate that if his stepson accompanied the applicant overseas, the



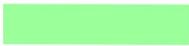
applicant's husband's loss of an emotional bond with his stepson would aggravate the adverse emotional impact of being separated from his wife.

The record reflects that the qualifying relative's annual earnings ranged from \$30,000 to \$38,000 from 2006 to 2008. While there is no documentation the applicant currently works outside the home, the record establishes that if his wife were not present, the qualifying relative's compliance with treatment would be uncertain, his depression and anxiety would become disabling, and his ability to continue being gainfully employed adversely affected. We conclude based on the cumulative evidence that, while the qualifying relative is the primary wage earner, his ability to continue working depends on the applicant's efforts and support.

We thus find that the hardships examined here go beyond what may be considered usual or typical consequences of inadmissibility and rise to the level of "extreme." The record reflects that the applicant is providing care and support without which her husband would again be prone to severe depression, which would affect his ability to work and remain compliant with treatment prescribed for serious medical conditions. Due to the qualifying relative's age, physical and mental health issues, and poor prognosis in the event medication and medical appointments are missed, the evidence demonstrates that he would face hardship beyond the ordinary hardship that is expected upon separation were the applicant to leave the country.

The documentation on record, when considered in its totality, reflects the applicant has established that her husband 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 hardship required for a waiver. However, the grant or denial of the waiver does not turn only on the issue of extreme hardship. It also hinges on the discretion of the Secretary 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-Morales, 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 extreme hardships the applicant’s husband will face if the applicant departs to the Philippines, regardless of whether he joins her there or remains here; the applicant’s long residence in the United States and lack of a criminal record; her extensive family and community ties here; support letters from family, friends, and pastor evidencing good character and community service; and passage of nearly 20 years since her unlawful entry. The unfavorable factors in this matter concern the applicant’s unlawful entry into 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. 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 that burden and, accordingly, our prior decision will be withdrawn.

ORDER: The motion is granted. The prior decision of the AAO dismissing the appeal is withdrawn and the underlying appeal is sustained.