



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUL 21 2015

FILE: [REDACTED]

APPLICATION RECEIPT: [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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Honolulu, Hawaii, denied the application. The matter 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 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 is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The district director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated December 10, 2013.

On appeal, filed on January 7, 2014, and received at the AAO on January 7, 2015, the applicant contends in the Notice of Appeal (Form I-290B) that the district director abused discretion and erred in denying the waiver application as evidence demonstrated her spouse would suffer extreme emotional, financial, and career hardship. With the appeal the applicant submits a statement, a psychological assessment of the applicant's spouse, and documentation about the medical conditions of the spouse's parents. The record contains statements from the applicant and her spouse, financial documentation and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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 that:

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 September 12, 1990, using a fraudulent passport bearing the name of another person. Based on this information the district

director determined the applicant inadmissible under Section 212(a)(6)(C) of the Act. The applicant has not 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. The applicant's spouse is the only qualifying relative in this case.¹ 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

¹ The record reflects that the applicant has U.S. citizen parents, but she has made no assertion and submitted no evidence that either of her parents would suffer extreme hardship due to her inadmissibility.

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. *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.

On appeal that applicant asserts that her spouse’s parents are totally dependent on him and that she is a partner in providing care as her spouse depends on her for assistance. She asserts that her spouse would face a greater burden financially and emotionally without her. The applicant states that her spouse’s parents are both in their 80s, that his father is a double amputee with heart problems and that his mother was diagnosed in 2007 with Alzheimer’s disease. She notes that her spouse received a hardship re-assignment with the Internal Revenue Service in June 2006 to care for his parents. The applicant states that her spouse is under severe emotional stress and anxiety that would increase if she were removed. In an affidavit dated November 13, 2010, the applicant’s spouse states that he is the only child responsible for the care of his parents, that he and the applicant are with his parents daily to help them with basic tasks, and that it would be hardship for him to work full time and provide the care his parents require. He further states that he would be emotionally, physically, and mentally devastated if he were apart from the applicant and losing a loved spouse would be emotionally painful and physically draining.

Documentation submitted to the record shows the father’s permanent disability with bilateral knee amputation, and includes a list of medications for the spouse’s father, the spouse’s hardship reassignment request with supporting letters, and a letter dated November 26, 2010, from the parents’ physician describing the father’s condition and increased need of assistance and the mother’s 2007 diagnosis of Alzheimer’s dementia. The letter states that the applicant’s spouse is their only child in Hawaii.

A psychological assessment of the applicant’s spouse, dated January 10, 2014, notes the health condition of the spouse’s parents and states that the spouse’s father can no longer walk on prosthetic legs so is homebound and will be entirely dependent for material and financial needs. The assessment describes the impact of the applicant’s removal as a devastating loss of emotional and

material support for the spouse, particularly in caring for his parents. The assessment diagnoses the applicant's spouse with adjustment disorder with anxiety and depression and describes him as sad, discouraged, irritable, and nervous. The assessment surmises that the combination of the spouse's stressors, including his deepening obligation to his elderly parents in their declining health, generates mental health symptoms likely to be further exacerbated if the applicant is removed from the United States.

The applicant states that her spouse would face increased financial burden without her. The psychological assessment indicates that the applicant is an administrative assistant and receptionist with a certified public accountant office and in a sworn statement dated April 30, 2013, the applicant indicated that she was working. Although no documentation has been submitted to the record establishing the specific financial contribution the applicant currently makes to their household, we note that loss of the applicant's income would contribute to the hardship that the applicant's spouse would experience with the loss of her emotional support and assistance as he provides care for his parents.

We find the record establishes that the applicant's spouse would suffer extreme hardship as a consequence of being separated from the applicant. The record supports that the applicant's spouse is the primary care provider for his elderly parents who have serious, long-term medical conditions. The spouse states he would feel emotionally devastated being apart from the applicant and the psychological assessment asserts that the applicant's removal would be a devastating emotional loss for her spouse, particularly as he cares for his parents.

Having reviewed the preceding evidence, we find it to establish that the applicant's spouse would experience extreme hardship due to separation from the applicant. We also find that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to the Philippines to reside with the applicant due to her inadmissibility. In his November 13, 2010, affidavit the applicant's spouse states that relocating would prevent him from providing care for his parents as he is their only child solely responsible for assisting them in daily activities such as meal preparation, transportation to medical appointments, shopping, and home maintenance. The spouse states that he has no ties to the Philippines, does not speak Tagalog, fears inadequate medical care, would lose his medical coverage as a full time U.S. Treasury Department employee, and would lose property that he has acquired because of the loss of income. The spouse also cites U.S. Department of State information that the Philippines faces long term challenges to economic development as well as from terrorist groups, kidnap-for-ransom gangs, natural disasters, poverty, political violence, and government corruption.

Here the record establishes the deteriorating health conditions of the spouse's parents and that the spouse has been providing daily care for them for nearly 10 years. Thus, the cumulative effect of the spouse's loss of career, benefits, and possibly his home at his age while being unable to fulfill his responsibilities to his elderly parents, would result in extreme hardship if he were to relocate to reside with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship.

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.

In *Matter of Mendez-Morales*, 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 or she 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 U.S. citizen spouse would face if the applicant is not granted this waiver, her employment, payment of taxes, volunteer activities, apparent lack of a criminal record, and the passage of nearly 25 years since her entry to the United

(b)(6)

NON-PRECEDENT DECISION

Page 7

States using a fraudulent passport. The unfavorable factor is the applicant's 1990 entry to the United States by fraud or misrepresentation.

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.