



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 23 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:  
[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Diego, 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 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), for willful misrepresentation of a material fact in order to procure admission into the United States. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to 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 did not establish that extreme hardship would be imposed on a qualifying relative; and she denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated January 2, 2014.

On appeal, the applicant, through counsel, asserts that new evidence supports finding that psychological, medical and financial issues will cause extreme hardship to the applicant's spouse. *Form I-290B, Notice of Appeal or Motion*, filed January 31, 2014.

The record includes, but is not limited to, statements from the applicant and his spouse, medical records, Internet articles about his spouse's medical conditions, financial records, a psychological evaluation, photographs, and immigration records. The entire record was reviewed and considered in rendering this decision on the appeal.

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

- (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:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (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 applicant procured admission to the United States in November 1994 by presenting a Philippines passport and U.S. visitor's visa in the name of [REDACTED]. The record reflects that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. The applicant does not contest this 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, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and U.S. Citizenship and Immigration Services (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*, 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.

We will first address evidence of hardship to the applicant’s spouse upon relocation to the Philippines. The applicant, through counsel, states that his spouse has been residing in the United States since 1985; six of her siblings are residing in the United States; her close friends are in the United States; and she does not have family in the Philippines. The applicant’s spouse, a native of the Philippines, states that she sees her siblings during the holidays and that she last visited the Philippines in 1997. The record includes a letter from one sister, with whom the applicant and his spouse live. The record also reflects that the applicant’s spouse is 62 years old.

The applicant, through counsel, asserts that his spouse has congestive heart failure and is undergoing hemodialysis every week; he and his spouse do not have the means to pay for weekly hemodialysis in the Philippines; and the applicant’s spouse receives government assistance to cover her medical care. The applicant’s spouse’s medical records reflect that she has congestive heart failure, essential hypertension, shoulder strain, cellulitis of the foot, diabetes with hyperglycemia, and rash and nonspecific skin eruption. The record includes medical evidence submitted on appeal, showing that in February 2015, the applicant’s spouse was instructed to continue taking 12 different medications and that she has received hemodialysis because of her chronic kidney disease. The record reflects that the applicant’s spouse receives health coverage through the California Medicaid program.

The record reflects that the applicant’s spouse has resided in the United States for 30 years, she has family ties in the United States, and she does not have ties in the Philippines. In addition, she has significant medical issues and can only afford care for her medical issues through government assistance in the United States. The record supports concluding that she and the applicant could not afford to pay for hemodialysis in the Philippines. Based on the totality of the hardship factors presented, therefore, we find that the applicant’s spouse would experience extreme hardship if she relocated to the Philippines.

Addressing the hardships the applicant's spouse would experience upon remaining in the United States without him, the applicant, through counsel, states that he is her only source of support, dependency and strength; and they have been together since 1997. The applicant, through counsel, asserts that he takes his spouse to her doctor's appointments and medical procedures. The applicant's spouse states that her health condition has become worse; sometimes she becomes unable to move; she needs the applicant with her; and she can hardly walk due to swollen feet.

The applicant submits an Internet article's medical definition of hemodialysis, reflecting it is for individuals "in relative, or complete, kidney failure"; that follow-up care, instruction and evaluation by health care professionals is imperative; and that a partner must be trained in order to safely administer home hemodialysis.

The psychologist who evaluated the applicant's spouse states that the applicant's spouse is experiencing uncontrolled crying spells, difficulty concentrating and sleeping, a mixture of anxiety and panic attacks, and feelings of helplessness and hopelessness. The applicant's spouse informed the psychologist that her social life with the applicant is limited due to her illness. The psychologist noted that the applicant's spouse fears "being left alone without financial means and . . . imagining her abandonment." The psychologist also noted that the applicant needed to assist his spouse by clarifying dates as they spoke and that his spouse's judgment was at times clouded due to her "obsessive worries" about the applicant's situation. Moreover, the psychologist reported a "serious concern that [the applicant's spouse's] mental functions might be seriously affected" without the applicant's support. She was diagnosed with symptoms of depressive disorder and generalized overwhelming anxiety disorder. The psychologist added that the breakup of their family poses a strong threat to the applicant's spouse's well-being and recommended psychological counseling.

The applicant's spouse states that she used to work as a cook and cashier at her sister's restaurant, but she quit in 2009 as she tired easily and her feet became swollen, and she has not worked since. The applicant's spouse states that she and the applicant live with her sister but they are looking for another place to live. The applicant, through counsel, states that travelling back and forth to the Philippines is not an option due to financial reasons; he has found employment at a [REDACTED] and is earning \$310 per week; and he and his spouse plan to rent an apartment. The record includes the applicant's paystubs, to corroborate claims of his employment and his wages.

The record reflects that the applicant's spouse would experience emotional, psychological and financial hardship without the applicant. In addition, she has significant medical issues that she could not manage alone, and the record reflects that he assists in caring for her. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

Considered in the aggregate, the applicant has established that his 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-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.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* 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 (citation omitted).

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 section 212(h)(1)(B) 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 include the applicant's U.S. citizen spouse, extreme hardship to his spouse, and his lack of a criminal record. The unfavorable factors include the applicant's period of unauthorized stay and his misrepresentation.

We find that the favorable factors in the present case outweigh the adverse factors, such that 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.