



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: JUN 26 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 cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, 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 that a favorable exercise of discretion is warranted; 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 May 7, 2014.

On appeal, the applicant, through counsel, asserts that the Field Office Director abused her discretion by finding that the applicant's spouse would not experience extreme hardship if the waiver application is denied. Specifically, the applicant asserts that the Field Office Director ignored certain factors and did not consider the evidence cumulatively. *Brief in Support of Appeal*, dated July 16, 2014.

The record includes, but is not limited to, statements from the applicant and her spouse, medical records, financial records, a psychological evaluation, photographs, country-conditions information on the Philippines 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 record reflects that the applicant procured admission to the United States on multiple occasions by presenting fraudulent documentation. Specifically, in July 1988, the applicant procured admission to the United States by presenting a passport under the name [REDACTED] containing a fraudulent Form I-551 stamp, Temporary Evidence of Lawful Admission for Permanent Residence. In addition, the record establishes that the applicant procured admission to the United States in 1991 using fraudulent travel documents, and in July 2001 by presenting a fraudulent passport and nonimmigrant visa under the name [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 or her children 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’s spouse states that he has resided in the United States for 30 years, and he has no friends or family in the Philippines who could extend help to him and the applicant.

Concerning the medical hardship he would experience in the Philippines, the applicant’s spouse states that he suffers from hypertension, atrial fibrillation, diverticulitis in the colon, and sleep apnea; he takes numerous medications and has regular physician appointments; he would not have medical insurance there, as it is too expensive; and his health would suffer due to the humid weather and pollution. The applicant’s spouse’s physician states that the applicant’s spouse is under his care; and he is being treated for atrial fibrillation, sleep apnea and diverticulitis of the colon. The record includes medical records corroborating these assertions, including lists of medications prescribed for the applicant’s spouse.

The applicant, through counsel, asserts that about one-third of the Filipino labor force is jobless or unemployed. The applicant’s spouse states that he and the applicant would live in poverty in the Philippines; he has no chance of finding a job, given his age; their families are not in a position to assist them; and they would not have a home there. The applicant states that she has no property in the Philippines and no prospects for employment due to her age. The record reflects that the applicant is 64 years old and her spouse is age 67.

The applicant, through counsel, states that the applicant and her spouse would be at particular risk of physical harm due to their perceived wealth, and they would be noticeable to terrorists and criminals due to their mannerisms, speech and viewpoints developed while living in the United States. The applicant's spouse states that the Philippines "is ravaged by criminals and terrorists." The record includes U.S. Department of State information on human rights issues and a 2013 travel warning for the Philippines.

The record reflects that the applicant's spouse has resided in the United States for almost half of his life, and he has several medical issues for which he currently receives treatment. He does not appear to have close ties to the Philippines, though the record includes a reference to two sons there. Considering his and the applicant's ages and time spent in the United States, their claims of being unable to find employment are plausible. Moreover, the applicant's spouse's concerns about general safety in the Philippines are supported by objective documentary evidence in the record. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if he relocated to the Philippines.

Addressing the hardships the applicant's spouse would experience upon remaining in the United States without her, the applicant's spouse states that he loves the applicant and cannot imagine life without her; he has divorced twice after physical separations related to relocation; he has been depressed and anxious; he has difficulty concentrating at work; he has regular headaches; the applicant is a professional caregiver; he depends on her daily; and he does not know how he will care for himself without her. The applicant states that she met her spouse in 1993 and they have been inseparable since that time; her spouse was lonely and sullen when she first met him; he is especially sensitive about separations, given his relationship history; he began to see the joy in life with her; and she fears that his depression would affect his blood pressure and could aggravate his heart condition. The applicant's spouse's physician states that having the applicant care for her spouse would help her spouse with his medical conditions; she helps manage her spouse's medication and medical visits; and her spouse derives physical and emotional comfort from her.

The psychologist who evaluated that the applicant's spouse states that the applicant's spouse is hearing impaired and he does not speak English as fluently as the applicant; and he relies on the applicant for "practical functions," such as making appointments and talking to medical providers; he has had episodes of depression due to a separation from the applicant, the death of his sister and loss of employment; his two previous marriages ended after immigration- and job-related separation; he has issues related to separation from his children in the Philippines and his inability to care for his parents in the Philippines during their final years; he is prone to prolonged emotional reactions; he meets the criteria for major depressive disorder, recurrent, in partial remission; and a protracted separation from the applicant would aggravate his residual anxiety and depression, compromising his ability to function.

Asserting that he would experience financial hardship without her, the applicant's spouse states that he could not survive financially, and he lost his job a few years ago. The applicant states that her spouse lost his job but has part-time work; he nonetheless may not be able to repay his debts or purchase his medication without her income. The psychologist refers to the applicant's spouse's employment as a one-to-one caregiver for a senior citizen. The applicant, through counsel, states that

the applicant and her spouse earn less than \$13,000 per year; they have more than \$11,000 in credit card debt; they have a small balance in their checking account; and her spouse would have to support two households. The record includes a 2013 credit card statement reflecting a balance of \$11,135.29. The applicant and her spouse's 2012 federal tax return reflects an income of \$12,642. The record does not include a recent bank account statement. The applicant, through counsel, asserts that the applicant's spouse cannot afford regular mental-health therapy.

The record reflects that the applicant's spouse would experience significant emotional hardship without the applicant, particularly given his past experiences with loss and separation, if he did not join the applicant in the Philippines. In addition, the record shows that she assists him with his medical issues. The record also reflects that he would experience some financial hardship without the applicant, because his income is insufficient to support himself and assist her financially, since her employment prospects in the Philippines are limited. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if he remained in the United States without the applicant.

Considered in the aggregate, the applicant has established that her 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 her spouse, her children and grandchildren in the United States, and her lack of a criminal record. The unfavorable factors include the applicant's lengthy period of unauthorized stay and her misrepresentations.

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.