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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H6

DATE: NOV 01 2011

OFFICE: CHICAGO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

 Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of the Philippines who entered the United States with a B2 visa on May 1, 1997, with authorization to remain until November 1, 1997, and subsequently her immigration status was extended to May 1, 1998. The applicant remained in the United States beyond that date and voluntarily departed on June 13, 2002. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated June 15, 2009.

On appeal, counsel for the applicant contends that the applicant's spouse will suffer from extreme emotional hardship if he is separated from his wife, based on his history of alcohol abuse. Counsel also asserts that the applicant's spouse will suffer from financial hardship and be forced to raise his stepchildren in the absence of his spouse. Counsel states that the applicant's spouse cannot relocate to the Philippines because he is a native of the United States whose family and friends need him in the United States. Counsel further claims that the applicant's spouse will suffer from medical hardship in the Philippines and be targeted for violence.

In support of the waiver application and appeal, the applicant submitted an immediate hardship assessment, criminal record paperwork for the applicant's spouse, letters from the applicant and her spouse, letters of support, medical documents, financial documents including taxes, legal paperwork, school records, and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

**(B) ALIENS UNLAWFULLY PRESENT.-**

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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 applicant’s qualifying relative in this case is her U.S. citizen spouse. The record contains references to hardship the applicant’s stepparents, stepchildren, and children would experience if the waiver application were denied. It is noted that Congress did not include hardship to these relatives as a factor to be considered in assessing hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s other non-qualifying relatives will not be separately considered, except as it may affect the applicant’s spouse.

In the present case, the record reflects that the applicant is a forty-one year-old native and citizen of the Philippines who was unlawfully present in the United States from May 1998 to June 2002. The applicant’s spouse is a forty-six year-old native and citizen of the United States. The applicant and her spouse are residing with her three children<sup>1</sup> in Loves Park, Illinois.

Counsel for the applicant asserts that the applicant’s spouse abused alcohol in the past and that he risks relapse if he is alone and separated from his spouse. Counsel also claims that the applicant’s spouse will suffer hardship if he is charged with caring for his stepchildren without his wife. The applicant’s spouse finalized a divorce on May 26, 1994, and he claims that his ex-wife became pregnant with another man’s child while married to him. *See Judgment for Dissolution of Marriage*, dated May 26, 1994; *Letter from* [REDACTED] dated January 24, 2009. The

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<sup>1</sup> The applicant’s three daughters are from a previous relationship. Her youngest daughter is a U.S. citizen and her other two daughters do not have citizenship or legal permanent resident status in the United States.

applicant's spouse stated that he was alone, and drank heavily to ease his pain. *See Letter from* [REDACTED] dated January 24, 2009. The applicant's spouse's ex-wife was granted primary custody of their child after the divorce and the applicant's spouse was granted visitation on Wednesdays and every other weekend. *See Judgment for Dissolution of Marriage*, dated May 26, 1994.

According to the applicant's spouse, he became very emotional after his divorce; after an emotional conversation with his ex-wife, he claims to have pulled the phone out of the wall and smashed it into pieces. *Id.* The record also contains evidence of an alcohol-related arrest for the applicant's spouse on May 18, 2001, after he was found asleep in his truck. *See Probable Cause Statement*, dated May 18, 2001. A social history and hardship assessment was submitted by counsel, which notes the applicant's spouse's prior history with alcohol abuse, extending for a period of nearly ten years. *See Social History Including Immigration Hardship Assessment by* [REDACTED] dated July 12, 2009. The assessment further states that the applicant does not have good coping skills and that his history puts him at risk of a similar deterioration if separated from his wife. *Id.*

Counsel for the applicant asserts that the applicant's spouse will suffer from financial hardship if the applicant returns to the Philippines. Counsel claims that even with the applicant's contributions to the household income, the applicant's spouse is past due in paying his bills. As a general manager of Cascade Industries Inc., the applicant's spouse earns a salary of forty-five thousand dollars, plus a company car and health insurance. *See Letter from* [REDACTED] [REDACTED] dated February 13, 2009. The applicant's spouse's paystubs indicate that he earns over \$2777.88 net per month. *See Paystub Details for Applicant's Spouse from January 8, 2009 to February 12, 2009.* The applicant's spouse states that he pays seventy-nine dollars a month in child support for his biological daughter and that it would be difficult to pay for a new house without his wife's income. *See Letter from* [REDACTED] dated January 24, 2009.

It is noted that there are some past due amounts on the submitted bills and counsel asserts that the applicant's spouse withdrew from his retirement savings to meet expenses. However, neither the applicant nor her spouse references any current financial difficulties in their submitted letters. Indeed, there is no explanation provided as to the cause for their past due payments and retirement withdrawals. Further, there is no indication that the applicant and his spouse are in danger of losing any of their services or property. Nevertheless, the record reflects that the applicant's spouse's prior history, including his years of alcohol abuse, coupled with his poor coping skills, would put the applicant's spouse at risk of similar difficulties if he were separated from his wife. The AAO thus concludes that were the applicant's spouse to remain in the United States without the applicant due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

Counsel contends that the applicant's spouse cannot relocate to the Philippines because he is a native of the United States who has never visited or resided in the Philippines. Counsel further asserts that the applicant's spouse's relatives need him in the United States and that, in order to relocate, he would be forced to leave behind his family, home, and employment. In support of counsel's assertions, the record contains evidence of the applicant's spouse's home ownership in

the United States. *See Parcel Details for 11-12-428-002.* Further, the applicant's spouse's employer submitted a letter stating the applicant's spouse is a general manager who has been employed with his company since September 2003. *See Letter from [REDACTED]* dated February 13, 2009. According to his employer, the applicant's spouse is a valued employee with over twenty-five years of experience in the countertop industry. *Id.* It is noted that the applicant's spouse's employer provides health benefits and counsel states that the applicant's spouse takes medication for his high blood pressure and cholesterol levels. *Id.* It is further noted that counsel submitted medical records for the applicant's spouse that consisted of tests and office visit notes, but there is no comprehensive and updated report from a medical professional outlining the extent of these maladies and necessary treatment.

The applicant's spouse states that he cannot move to the Philippines because he would leave his mother and father, stepfather, sister, and daughter behind in the United States. *See Letter from [REDACTED]* dated January 24, 2009. Counsel asserts that the applicant's spouse is needed by his family to assist his aging parents and help his daughter through college. The applicant's spouse's mother submitted a letter stating that her husband was diagnosed over two years ago with early-stage Alzheimer's and that she needs her son's help to get through this hardship. *See Letter from [REDACTED]*, dated January 20, 2009. The applicant's spouse's sister submitted a letter stating that their family depends on each other; she moved to Texas to be closer to their biological father, who has respiratory problems, and their mother needs the applicant's spouse nearby to assist and support her. *See Letter from [REDACTED]* dated January 16, 2009. The applicant's spouse and his daughter state that that they are very close and he expects to emotionally and financially support her through college. *See Letter from [REDACTED]* dated January 18, 2009; *Letter from [REDACTED]*, dated January 24, 2009.

The record establishes that the applicant's spouse is a forty-six year-old native and citizen of the United States who has never visited the Philippines. Letters of support were submitted by the applicant's relatives in the United States establishing the relationships that he shares with his mother, father, daughter, and sister and the extent to which they depend on him. The record also contains evidence of the applicant's spouse's home ownership in the United States and long-term employment in his field of expertise. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to the Philippines, rise to the level of extreme hardship.

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-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 AAO notes 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.

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 extreme hardships the applicant's U.S. citizen spouse would face if the applicant were to reside in the Philippines, regardless of whether he accompanied the

applicant or remained in the United States; the applicant's apparent lack of a criminal record; support letters from family members and acquaintances; gainful employment in the United States; the payment of taxes; and the passage of more than ten years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter include the applicant's unlawful entry into the United States, in addition to her unlawful presence and employment while in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, 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.

**ORDER:** The appeal is sustained. The waiver application is approved.