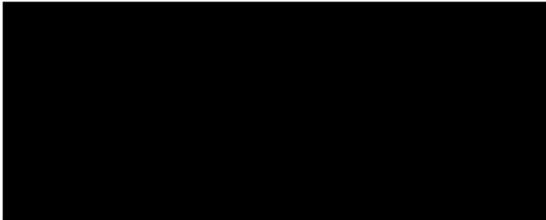


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
U.S. Citizenship  
and Immigration  
Services



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Date: **NOV 29 2011**

Office: MANILA, PHILIPPINES

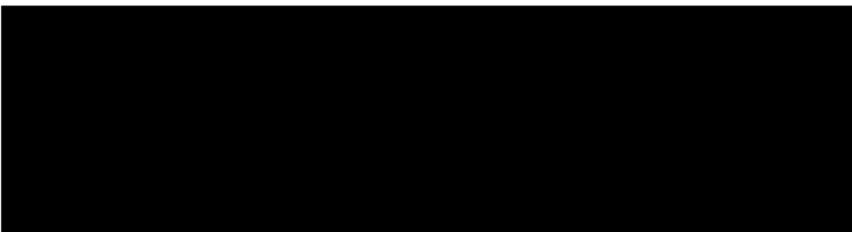
FILE:

IN RE:

Applicant:

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and 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, Manila, the Philippines, 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 seeking to procure a United States immigration benefit through fraud or misrepresentation; and section 212(a)(9)(B)(i)(II) of 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 his last departure from the United States. The record indicates that the applicant is married to a lawful permanent resident of the United States, he is the son of lawful permanent residents of the United States, and he is the father of four lawful permanent resident children and one United States citizen child. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse, parents, and children.

The Field Office Director found that the applicant had established that extreme hardship would be imposed on the applicant's qualifying relatives. However, the Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as a matter of discretion, based largely on the applicant's previous violations of U.S. immigration laws. *Decision of the Field Office Director*, dated February 5, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application. *See attachment to Form I-290B*, filed March 5, 2009.

The record includes, but is not limited to, counsel's appeal brief; counsel's brief in support of the applicant's Form I-601; statements from the applicant, his wife, and his parents; letters of support for the applicant and his wife; medical documents for the applicant's wife and his parents; mental health documentation for the applicant's wife; school records for the applicant's children; retirement and insurance documents; tax documents; household bills, utility bills, and past due bills; documents on employment opportunities and health insurance in the Philippines; articles on Avian influenza and country conditions in the Philippines; a country specific information document on the Philippines; and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.

- .....
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary 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 immigrant 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...

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

(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.

- .....
- (iii) Exceptions.-

.....

- (II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

- .....
- (v) Waiver.-The [Secretary] 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 [Secretary] 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.

In the present case, the record indicates that on August 26, 1994, the applicant entered the United States on a C-1 Crewman visa with authorization to remain in the United States until September 1, 1994. On September 19, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On June 27, 1996, an immigration judge granted the applicant voluntary departure to depart the United States by December 30, 1996. The applicant failed to depart the United States by the specified date. On February 7, 2003, the applicant was removed from the United States.

In counsel's appeal brief dated April 2, 2009, counsel claims that "USCIS abused its discretion by transforming an I-601 waiver application for unlawful presence under INA 212(a)(9)(B)(i)(II) into a fraud denial under INA 212(a)(6)(C)(i), by referring to, and effectively readjudicating a previously approved I-212 application from the Vermont Service Center ("VSC")." Counsel asserts that "the USCIS deprived [a]pplicant of an opportunity to respond to any allegations of fraud and/or to present additional argument and evidence to establish that he merits a grant of an I-601 waiver as a matter of discretion." The AAO notes that the record does not establish that the Field Office Director readjudicated the applicant's approved Form I-212 and the approval of the Form I-212 still stands. Additionally, the Form I-212 is a request for permission to reapply for admission into the United States after removal; it is not a waiver for the applicant's inadmissibility for misrepresentation. Further, the applicant has an opportunity to respond to the fraud allegation on appeal. The AAO notes that the record establishes that the applicant testified that he had no intention of joining a ship or working as a crewman when he applied for the C-1 Crewman visa. Additionally, he admitted that several of the statements in his Form I-589 were false. Based on these misrepresentations, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

Additionally, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until February 7, 2003, when he was removed from the United States. The applicant is attempting to seek admission into the United States within ten years of his February 7, 2003 removal from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of his departure from the United States.

Waivers of inadmissibility under section 212(a)(9)(B)(v) and section 212(i) of the Act are 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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife and parents are the only qualifying relatives in this case. 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 of Immigration Appeals (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.

In a statement dated December 1, 2008, the applicant's wife states she cannot join the applicant in the Philippines because she "cannot sacrifice the future of [her] five children, [her] career, health and income." Additionally, the applicant's wife states that if she joins the applicant in the Philippines, she will lose her lawful permanent resident status. She states that she will lose her job which she has been at for eleven (11) years, and she will lose her retirement and health insurance. The applicant's wife states she will have to "withdraw [her] 401-K" and "discontinue [her] social security contributions." The applicant's wife states she is suffering from postpartum depression. She also states she suffers from anemia and a polyp in her gallbladder. The AAO notes that the record establishes that the applicant's wife has a polyp in her gallbladder. *See sonogram report*, dated November 5, 2008. She claims that she will not "receive the same or similar medical attention and treatment" in the Philippines. The applicant's wife states to move her family to the Philippines will cost \$9,000.00, which is "money [they] do not have." She states she cannot "afford to leave the U.S. and start all over again in the Philippines. [She] simply [does] not have the financial resources to re-establish [her] life abroad." She states she "may still be employable in the Philippines. However, it would not be a question of employment opportunities, but income." She claims that she cannot "afford to obtain medical insurance for everyone" in the Philippines. The applicant's wife states she cannot afford "to provide for the children's education" in the Philippines. She claims that "there are no meaningful student loan or financial aid." The applicant's wife states she has credit card debt of \$20,000.00, and it will "be next to impossible to pay these with [her] Philippine peso earnings." The AAO notes the applicant's wife's concerns regarding the difficulties she would face in returning to the Philippines.

In a statement dated March 22, 2008, the applicant's parents state their "children live in the same neighborhood as [theirs]" and they have "strong family ties in the United States." In a statement dated November 26, 2008, the applicant's parents state they will lose their lawful permanent resident status if they join the applicant in the Philippines. They claim they "have no properties, assets, savings, or prospect of work in the Philippines." The applicant's parents state the applicant's mother is employed in the United States as a house manager and caregiver, and her employment provides them with health insurance. They state they have financial obligations in the United States and they want to pay them off. The applicant's parents state they have medical conditions which are controlled in the United States. The AAO notes that the record establishes that the applicant's mother has Type II diabetes, hypertension, and degenerative joint disease. *See statement from Dr. [REDACTED]* dated October 28, 2008. The AAO also notes that the record establishes that the applicant's father suffers from Type

II diabetes, hypertension, degenerative joint disease, gout, arthropathy, and cataract. *See statement from Dr. [REDACTED], undated.* The applicant's parents state that if they "relocate to the Philippines, [their] health protection program will no longer be available to [them]." They state that they "may not even be able to afford to buy [their] medicines in the Philippines." They claim that even if "there are medical health plans and insurance available, [they] could not afford the premium." The AAO notes the applicant's parent's concerns regarding the difficulties they would face in returning to the Philippines.

The AAO acknowledges that the applicant's wife and parents have resided in the United States for many years and that they may experience some hardship in returning to the Philippines. Based on the record as a whole including the applicant's spouse's and his parent's lawful permanent resident status, their loss of employment and health insurance, their medical issues, their financial obligations in the United States, their lack of health insurance in the Philippines, the applicant's spouse's emotional issues, the expense of moving the family to the Philippines, the applicant's parent's separation from their family in the United States, and the disruption of the children's education in the United States, the AAO finds that the applicant's wife and parents would suffer extreme hardship if they were to join the applicant in the Philippines.

Regarding the hardship the applicant's wife and parents would suffer if they were to remain in the United States, in a statement dated December 8, 2008, the applicant states they "are a broken family." In a statement dated March 25, 2008, the applicant's wife states they have been married for almost nineteen (19) years. The record reflects that the applicant and his spouse were married on June 1, 1989. In a statement dated November 3, 2008, Dr. [REDACTED] reports that the applicant's wife is suffering financial and emotional hardship without the applicant. The applicant's wife states she is "suffering severe financial, emotional and physical hardship because of the absence of [the applicant]." The applicant's wife states she needs the applicant in the United States to help with the baby, "to raise and discipline [their] children," to "take care and provide for [their] needs," and to be "the head of the family." The applicant states his wife "needs [him] more than ever especially so because [their] baby." He states he cannot "fulfill [his] paternal obligations to [his] children and have lost very precious time with [his] wife and children." In a statement dated November 5, 2008, Mr. [REDACTED] states the applicant "is so sad and cannot bear it anymore to be afar from his wife and children, and relatives who are all now residing in the United States." Mr. [REDACTED] states the applicant is depressed and even his physical appearance has changed. The applicant's wife states her children "are devastated and the feeling of 'being abandoned' persist[s]." She states her children "have lost motivation, direction, become 'rebellious' and lacked initiative in almost everything." She states she struggles with the children.

As noted above, the applicant's wife states she suffers from postpartum depression, anemia and a polyp in her gallbladder. In a statement dated February 28, 2008, licensed social worker [REDACTED] states the applicant's wife "is a person who needs a great deal of attention and affection." Ms. [REDACTED] reports that the applicant's absence, "the pressures at home and a new baby," are contributing to the applicant's wife's "feelings of depression and loneliness." The AAO

notes that the record does not contain medical documentation which supports the applicant's wife's claim of depression; however, the AAO notes the mental health concerns for the applicant's wife. Additionally, the AAO notes the medical concerns of the applicant's wife.

The applicant's wife states the applicant works as a teacher in the Philippines, and with his salary, "[h]e could not send [her] financial assistance no matter how much he wanted to." She states that when the applicant was in the United States, he made \$34,000.00 a year, and this "would be a welcome relief for [her]." The applicant's wife states she is a single parent and "the sole wage earner." She states she has "five children, ages 4 months to 19 years old, who depend on [her] for all their needs." The AAO notes that the record establishes that the applicant's wife is past due on some of her bills. The applicant's wife states she and her children reside with her in-law's "so that [she] can save on apartment rental," and they help care for the baby. The applicant's parents states they "have a number of financial obligations including mortgage and credit cards," but they are "helping [the applicant's wife] and her children financially." The applicant's parents state that when the applicant was in the United States, he helped them financially. The AAO notes the applicant's wife and parents financial concerns.

While the AAO notes the applicant's wife's claims of financial hardship, it does not find the record to support them. The AAO finds the record to include some documentation of the applicant's wife's income and expenses; however, this material offers insufficient proof that she is unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States alone. However, even though the record fails to establish that the applicant's spouse is unable to meet her financial obligations, the AAO notes the applicant's wife's financial concerns.

The AAO finds that when the applicant's wife's emotional issues, financial issues, and having to raise five children without the assistance of the applicant, are considered in combination with the normal hardships that result from the exclusion of a loved one, the applicant has established that his wife would experience extreme hardship if she remained in the United States. However, based on the record before it, the AAO finds that the applicant has failed to establish that his parents would suffer extreme hardship if his waiver application is denied and they remain in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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).

As noted by the field office director, the adverse factors in the present case include the applicant's misrepresentations in applying for and obtaining a C-1 visa, his misrepresentations in his asylum application, his failure to abide by an immigration judge's order, his removal from the United States, his unlawful presence and unauthorized employment. Counsel is incorrect in stating that the applicant's misrepresentations were "forgiven" as a result of the approval of his Form I-212. Rather, the AAO finds that the field office director was correct to consider the applicant's previous immigration law violations in reaching his decision. However, the AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Specifically, the favorable factors in this case are the presence of the applicant's wife, parents, and five children in the United States; the extreme hardship to his wife if he were refused admission as discussed above; hardship to the applicant's parents and five children if he were refused admission; evidence of the applicant's and his family's community ties in the United States; and evidence of the applicant's good character as shown by the letters of support and the absence of a criminal record.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) and section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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