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

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 27 2012 OFFICE: LOS ANGELES, CA FILE: [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:

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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, Los Angeles, California, and 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 has resided in the United States since 1990, when she used a passport which did not belong to her to procure admission into the United States. She 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse and child of U.S. Citizens and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. Citizen spouse and parents.

The Field Office Director concluded that the applicant failed to establish extreme hardship to qualifying relatives given her inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated May 11, 2009.

On appeal, counsel for the applicant contends that if the applicant's spouse were separated from the applicant he would be unable to care for his elderly father, and he would experience psychological difficulties. Counsel also asserts that the applicant's parents would suffer from financial hardship due to the cost of travel to the Philippines. Counsel additionally indicates that the applicant's spouse would experience extreme hardship upon relocation to the Philippines because of his inability to find employment in his field, his lack of ties to the Philippines, and the adverse economic conditions.

The record includes, but is not limited to, statements from the applicant and her spouse, letters of support from family, friends, and community members, financial documents, medical records, evidence of birth, marriage, residence, and citizenship, a psychological evaluation, articles on country conditions, and photographs. 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:

> (1) The [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.

In the present case, the applicant admits that in 1990 she used a passport and a nonimmigrant visa which did not belong to her to procure admission to the United States. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relatives are her U.S. Citizen spouse and parents.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

The applicant's spouse asserts that he and the applicant have moved in with his father, a 93 year old Air Force veteran, to take care of him and help him with his medical issues. The spouse explains because he has to work full time as an editor at the National Notary Association, the applicant, who is a nurse, takes responsibility for helping the spouse's father with tasks such as grocery shopping, preparing meals, taking him to appointments, and taking care of his home and paying his bills. Medical records indicate that the spouse's father has macular degeneration, hearing loss, and atrial fibrillation. The applicant's employer states that the applicant is a reliable and productive nurse. The spouse's employer verifies his employment as well, adding that he has been employed with the National Notary Association since 1998 as an associate editor, and makes $47,000 a year. A licensed psychologist explains that the spouse was treated in 2003 and 2007 for obsessive-compulsive disorder as a result of work related stress, that his mother and brother also have the disorder, and that the spouse's brother attempted to commit suicide three years ago. The psychologist opines that the spouse also suffers from an adjustment disorder with anxiety and depressed mood. The spouse adds that his difficulties would be compounded by the fact that the applicant is pregnant, and separation would tear apart the new family. Moreover, counsel indicates although the applicant's U.S. Citizen parents do not depend on her for economic support, they have some health issues and would have to spend significant amounts of money to visit her in the Philippines.

The spouse contends he would experience great difficulties if he had to relocate to the Philippines. He indicates he would have to leave his father and mother behind, and move to a country where he has no ties, no family, no foreign language skills, and no employment prospects. Articles on economic conditions in the Philippines are submitted, as are articles on the government's treatment of journalists. Counsel asserts that difficulty adjusting to life in the Philippines would exacerbate his psychological condition.

Evidence of record demonstrates that the applicant and her spouse live with and assist the spouse's 93 year old father who has macular degeneration, hearing loss, and other medical conditions which require assistance. The record also shows that the applicant is situated to provide substantial assistance to her father in law because she is an experienced licensed nurse. The spouse states that he would not be able to help his father as well without the applicant present, given his professional responsibilities in his full-time job. The spouse's assertions with respect to his psychological difficulties are also supported by the record. Medical records from 2007 corroborate the psychologist's report on the spouse's obsessive compulsive disorder, and a letter from the applicant's physician confirms the applicant's pregnancy.

Given the evidence of record, the applicant has shown that her spouse would experience difficulties because of their responsibilities towards the spouse's father and his own psychological issues stemming from family history, work-related stress, and other factors. As such, the AAO finds there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the medical, psychological, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without his spouse.

The applicant has also demonstrated that her spouse will experience hardship upon relocation to the Philippines. The record reflects that the applicant's spouse was born and raised in the United States, does not have Tagalog language skills, and that he has family ties in this country. Furthermore, the applicant has demonstrated that moving to the Philippines given her father in law's health and assistance needs would add to the spouse's hardship. The record moreover indicates that the applicant's spouse has had steady employment as an associate editor since 1998, and that relocating to the Philippines would entail leaving this employment as well as his family.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the Philippines.

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.

The adverse factors include the applicant's 1990 misrepresentation to procure admission and periods of unauthorized presence. The positive factors include the extreme hardship to the applicant's spouse, family ties in the United States, evidence of good moral character and service to the community as described in letters from family and friends, a lack of criminal history, and residence of long standing in the United States.

Although the applicant's violation 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.