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

U.S. Citizenship and Immigration Services

H5

[redacted]
BURR RIDGE, IL 60527

FILE: [redacted] Office: CHICAGO Date: SEP 20 2010

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]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

ACTION COMPLETED
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Initials: JT [illegible]: 6/22/11
FCO/Unit COW

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

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 having procured entry into the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a Lawful Permanent Resident (LPR) of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her husband and her parents.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 11, 2007.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application in that "the director's decision failed to discuss and thus clearly failed to consider all of the materials submitted by the parties." *Form I-290B*, filed December 11, 2007.

The record includes, but is not limited to, counsel's statement, statements by the applicant and her husband, dated January 12, 2007 and December 18, 2006, respectively, a psychological evaluation of the applicant's husband dated December 31, 2006, copies of financial statements of the applicant's husband, a copy of a joint account statement from TCF bank for the applicant and her husband, copies of bills and other financial documents, a letter from [redacted], a relative of the applicant's husband, stating that the applicant and his wife have been residing with him since the beginning of 2006 and that they share household chores and contribute towards rent, letters and statements from friends and other relatives of the applicant and her husband, and copies of news articles on the Philippines and Sri Lanka. 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.
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> . . . .
>
> (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...

In the present case, the applicant claims that she entered the United States on November 19, 1995 with a Philippine tour group. On March 18, 2006, the applicant and her husband were married in Chicago, Illinois. On April 26, 2006, the applicant filed a derivative Application to Register Permanent Residence or Adjust Status (Form I-485) as a dependent of her husband, who was granted legal permanent resident status as the beneficiary of an approved I-140, Immigrant Petition for Alien Worker. On January 22, 2007, the applicant filed a Form I-601. On November 16, 2007, the Field Office Director denied the applicant's Form I-485 and the Form I-601, finding that the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. On December 11, 2007, the applicant through her attorney filed a Form I-290B, Notice of Appeal or Motion. Counsel does not dispute the finding of inadmissibility.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband and parents are the 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994)

(addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record reflects that the applicant's husband is a 37-year-old native of Sri Lanka and a Legal Permanent Resident of the United States. The applicant and her husband were married in Chicago, Illinois, on March 18, 2006, and do not have any children. The applicant's husband asserts that he is suffering extreme emotional and financial hardships as a result of the denial of the applicant's waiver application.

The applicant's husband states that he does not want to relocate to the Philippines to live with the applicant for the following reasons: he has been living in the United States since 1992, he does not want to give up everything he has worked for since 1992, such as his long term employment and his support system in the United States, he does not understand the Philippine language and culture, there is minimal opportunity for employment in the Philippines due to the high rate of unemployment in the country, which will result in "heavy economic losses for me and also my parents I presently support back in Sri Lanka." *See Statement from* [redacted], dated December 18, 2006. The applicant's husband also states that he does not want to relocate to Sri Lanka with the applicant due to "the extremely difficult living conditions and the uncertainty of life due to the ongoing war." The applicant states that relocation to the Philippines will cause hardship for her husband because he does not understand the language, will face different surroundings far from his own family, and there is a lack of career opportunities for him in the Philippines because of the shortage of jobs there. *Statement from* [redacted] dated January 12, 2007.

While the AAO acknowledges the claims made by the applicant's husband, it does not find the evidence in the record sufficient to support them. The AAO notes that the applicant's husband is not required to relocate to Sri Lanka. The AAO acknowledges that the applicant's husband is not from the Philippines and may not understand the language and culture, however, the record does not contain documentary evidence such as country condition reports on the Philippines that demonstrate that the applicant's husband would be unable to obtain employment upon relocation there. The record contains news articles on poverty and welfare in the Philippines during the 1980s and early 1990, but does not contain current information about the economic and welfare conditions in the country. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also notes that other than the statement from the applicant's husband, the record does not include any evidence of financial, medical, or other types of hardship that the applicant's husband would experience if he relocated to the Philippines with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship upon relocation to the Philippines.

The record also fails to establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment. As a Legal Permanent Resident of the United States, the applicant's husband is not required to reside outside the United States as a result of denial of the applicant's waiver request.

The applicant's husband states that the applicant has supported him emotionally, has been a "tower of strength and support for me," that he wants the applicant to be by his side for the rest of his life and cannot imagine life without her. *Statement from* [redacted] dated December 18, 2006. The

applicant's husband also states that he and the applicant want to start a family, which will be impossible if the applicant is removed from the United States as a result of her inadmissibility. *Id.* The applicant states that she does not wish to be separated from her husband because they just got married and "he is my life right now," and the thought of separation "makes me cry and miserable." *Statement from* [redacted] dated January 12, 2007. The applicant also states that she and her husband want to start a family in the United States, but her removal from the country will make it difficult to have a family. *Id.*

The applicant's wife further states that her family is experiencing some tough times; her parents are not in the best health, her father suffered a brain aneurysm and stroke in 2006 and has needed much care since then; her mother has diabetes with complications and has become sick since her husband's stroke, and that she needs to remain in the United States to take care of them. *Statement from* [redacted] dated January 12, 2007.

The record contains copies of the applicant's parents' Alien Resident Cards. The record also contains a psychological evaluation of the applicant's husband by [redacted] dated December 31, 2006. [redacted] described in detail the long protracted war in Sri Lanka and the emotional and psychological hardship it had on the applicant's husband. [redacted] states that based on the applicant's husband's past history and current chronic and fragile emotional and psychological state, he could very likely experience an extreme health hardship were he and the applicant separated for a prolonged and indefinite period of time due to her inadmissibility. [redacted] concludes that, in light of the applicant's husband's personal history of displacement, separation and loss, a family history of depression and "suicidality," and the applicant's husband's own emotional and psychological state, the possibility of a prolonged and indefinite separation from the applicant pending the resolution of her immigration status could likely result in extreme hardship to the applicant's husband, which could very likely place the applicant's husband at risk for a major depressive episode and/or a suicidal attempt. *See Psychological Evaluation of Prasana Deshapriya Lakmal Fernando by Dennis R. Karamitis, S.J., Psy.D.,* dated December 31, 2006. Dr. Karamitis recommends the following to the applicant's husband: (1) a psychiatric evaluation for psychotropic medication for untreated depression, anxiety and stress, (2) individual psychotherapy to process the long-term emotional effects relative to his history of displacement, separation and loss, and (3) a supportive network that includes medical, psychiatric, social and spiritual services and personnel in the event that the applicant's waiver application is denied and he is separated from the applicant. *Id.*

Regarding the claim of hardship to the applicant's parents as a result of separation, although the applicant claims that her parents have severe medical conditions and that she has to remain in the United States to care for them, the applicant submitted no medical records or other documentation detailing the nature and severity of her parent's medical conditions and the treatment required. Also, the applicant has submitted no documentation that demonstrates that the applicant's parents require a caregiver and that the applicant is the caregiver. Furthermore, the record reflects that the applicant's parents have other children living in the United States, and it has not been established that they cannot provide assistance to their parents.

With respect to the applicant's husband, although he claims emotional and financial hardship as a result of separation from the applicant, the evidence in the record is insufficient to establish that the challenges

he may encounter rises to the level of extreme hardship. The record does not contain detailed information or documentation regarding the applicant's and her husband's income and expenses. Without such evidence, the AAO cannot determine that separation will cause extreme financial hardship to the applicant's husband. As to emotional hardship, the record includes a report of psychological evaluation of the applicant's husband by [redacted]. [redacted] found that the applicant's husband could suffer extreme hardship because of his prior history and fear of a prolonged separation from the applicant. [redacted] made several recommendations, which he said will help the applicant's husband deal with his past history of emotional hardship (unrelated to the applicant's inadmissibility) and the potential hardship on him if separated from the applicant. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's husband and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of exceptional hardship. The record also does not reflect that the applicant's husband has implemented any of [redacted] recommendations. Thus, the AAO finds that the evidence in this record, when considered cumulatively, fails to establish that the applicant's husband would suffer extreme hardship if the applicant were to be removed and he remained in the United States.

In sum, although the applicant's qualifying relatives claim hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relatives, as required for a waiver of inadmissibility under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.