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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

H5

[redacted]

DATE: DEC 23 2011 OFFICE: WASHINGTON, DC 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:

[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 $630. 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,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines who 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director,* dated August 25, 2009.

On appeal, counsel asserts extreme hardship of a "physical, emotional, financial, medical, and psychological" nature to the applicant's spouse if a waiver is not granted, and extreme hardship to the applicant's elderly mother who is "dependent on her daughter in all aspects of her life." See *I-290B, Notice of Appeal or Motion,* received September 24, 2009.

The record includes, but is not limited to: Forms I-601, I-485, and denials of each; two hardship affidavits from the applicant's husband; an affidavit from the applicant; chapter 7 bankruptcy documents; physician's letter and medical records concerning the applicant's mother; Philippines country conditions print-outs; tax returns, earnings and retirement income statements; bills; marriage, divorce, death, and birth records; Form I-130 and Form I-130 withdrawal. 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, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that on or about November 23, 1996, the applicant entered the United States by presenting the passport of another individual to immigration authorities. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The applicant does not contest these findings on appeal.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse and mother are her only qualifying relatives. 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).

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 record reflects that the applicant's spouse is a 56-year-old native and citizen of the United States. Addressing separation-related hardship, the applicant's spouse states that without his wife he will "be under severe stress, depression and physical discomfort." See *Hardship Affidavit 1*, dated November 15, 2007. He states that in addition to needing his wife's comforting presence and emotional support, he relies on her to prepare a strict diet of bland food because of his ulcerative colitis condition. *Id.* The applicant's spouse states: "If I fail to follow my doctor's orders regarding my diet, my medical condition will worsen and I'll become seriously ill. I need regular check-ups and medication." *Id.* The record contains no documentary evidence concerning any medical conditions suffered by the applicant's spouse nor any treatments recommended for and/or medications taken by him. The applicant's spouse states that his wife does the grocery shopping, prepares his food, monitors his food and medication, and takes care of him whenever he needs to "undergo medical check-ups or go to doctor's appointments." *Id.* He states that without the applicant, he does not think he has the discipline to stick to his strict diet. *Id.* The applicant's spouse states that he does not think he could visit his wife regularly in the Philippines as his "health problems and need for regular medical check-ups will prevent" him

from traveling abroad and he "cannot tolerate the heat and humidity." *Id.* No supporting medical evidence has been submitted. While the AAO recognizes that the applicant provides caring emotional and physical support for her spouse, the record does not establish that the applicant's spouse's emotional, physical or medical difficulties go beyond the normal hardships associated with removability or inadmissibility of a family member.

With regard to economic hardship, the applicant's spouse states that he and his wife share household expenses and their combined incomes enable them to pay all their obligations "and enjoy a fairly comfortable life." See *Hardship Affidavit 1*, dated November 15, 2007. He states that he would "suffer financially and have difficulties" meeting financial obligations without the applicant's income from the business he purchased for her, [redacted] dba [redacted]' in 2004. *Id.*

The record shows that the applicant's spouse receives his own annual income of nearly $100,000. See *Metropolitan Washington Airports Administration*, dated November 7, 2008 ($56,722 annual salary); and *County of Fairfax, Virginia Retirement Administration Letter*, dated November 7, 2008 ($3,246 monthly [$38,952 annually], plus annual cost of living increases on July 1 of every year). He states that he additionally works "for Homeland Security in the preposition equipment program." See *Hardship Affidavit 2*, dated July 9, 2009. The record contains no income or earning statements for this position and his salary therefrom is unknown. The applicant's spouse lists his monthly expenses as car insurance $150/month; utility bills $200/month; groceries and household expenses $100/month; and house maintenance $200/month. See *Hardship Affidavit 1*, dated November 15, 2007. He additionally lists "real estate and insurance" $4,000, *id.*, though it is unclear whether this amount is an annual obligation or for some other period. Though various billing statements have been submitted including utilities, telephone service, cable television, internet, and auto insurance, the record contains no property tax or insurance statements. If the $4,000 figure is an annual obligation, $334 monthly would be owed for a monthly expense total of $984. Between the applicant's spouse's salary ($4,727/month) and pension ($3,246/month), his gross monthly income is $7,973, not including any salary he receives from "Homeland Security." The applicant's spouse states that his "personal debts and obligations total" $4,750. *Id.* The amount he pays monthly toward this sum is not delineated, but it appears that his income significantly exceeds his stated expenses even without his wife's contribution. Additionally, the record contains evidence that the applicant's spouse filed a Chapter 7 Bankruptcy Petition on May 21, 2007, by definition discharging any unsecured debt he had at that time. See *Bankruptcy Documents*, various dates. The applicant's spouse states that he owns his home which he inherited from his parents (see *Hardship Affidavit 1*, dated November 15, 2007), and the record contains no mortgage statements or evidence of loans against the property. The applicant's spouse states that he will be unable to visit his wife in the Philippines because he "cannot afford the high cost of airfare and the expenses in conjunction with my visits." *Id.* The record contains no airfare cost evidence nor evidence of any related costs. The applicant's spouse states that he could not take "long or frequent leave of absence from work" or he would lose his job. *Id.* As the record contains no supporting evidence, the AAO will not speculate in this regard. The AAO recognizes that the applicant's spouse's

household income would be reduced in the absence of his wife. However, the evidence in the record is insufficient to show that the applicant's spouse would be unable to support himself in the event of her removal or inadmissibility.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Counsel asserts on appeal that the applicant's mother depends on the applicant "for everything." See *Counsel's Brief*, dated September 29, 2009. Counsel asserts that the applicant "provides emotional and financial support for her family, especially for" her mother. *Id.* The applicant's spouse states that his wife provides great care for her elderly mother who lives with them. See *Hardship Affidavit 2*, dated July 9, 2009. He states that his mother-in-law is very frail, cracked her hip falling down the stairs necessitating medical care, and that without the applicant's support he would be unable to care for her himself. *Id.* The record contains a number of medical records concerning the applicant's mother. In a *Physician's Letter*, dated July 13, 2009, [redacted] asserts that she has been his patient since November 2007 and suffers from Osteoporosis, Hypertension, Anemia, and Vasculitis. *Id.* An attached "Medical History" also includes notes about Bronchial Asthma, Depression, Cholelithiasis, and a Compression Fracture of her L3 vertebrae due to a May 2009 fall. *Id.* [redacted] lists a number of medications taken by the applicant's mother. *Id.* Counsel asserts that the applicant's mother is being cared for by the applicant "because her sons and other family members are unable to assist her." *Id.* Counsel so asserts while acknowledging that all the applicant's mother's children live in the United States and she was sponsored for permanent residency by a child other than the applicant. *Id.* Counsel asserts that one daughter is estranged from her mother and other family members, one son is married with six children to support, another son has three children to support, and that "other family members are distant relatives with their own families to support." *Id.* The record reflects that the applicant's mother has resided with the applicant. However, the record contains no objective evidence to show that the applicant's siblings would be unable or unwilling to provide support to the applicant's mother or that the applicant's mother would be left uncared for in her daughter's absence.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's mother. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, counsel asserts that the applicant's mother "would lose her Permanent Residency and the ability to receive the medical treatment she desperately needs, the financial support she has from [redacted] the ability to visit her sons and grandchildren, and even the chance of reconciling with her other daughter." See *Counsel's Brief*, dated September 29, 2009. The evidence in the record is insufficient to establish that the applicant's mother would be

without medical treatment or financial support from the applicant if she chooses to relocate with her to the Philippines. The AAO acknowledges that if the applicant's mother were to relocate, she may place her permanent residency at risk and would face separation from her children and grandchildren in the U.S.

The AAO has considered cumulatively all assertions of hardship to the applicant's mother including readjustment to a country in which she has not lived for a number of years, family separation – particularly from her other children and grandchildren, and that she is elderly and in frail health. Considered in the aggregate, the AAO finds that the evidence in the record is sufficient to demonstrate that the applicant's lawful permanent resident mother would suffer extreme hardship if she were to relocate to the Philippines to be with the applicant.

With regard to relocation for the applicant's spouse, he states that he cannot join his wife in the Philippines "because I will be an alien there." See *Hardship Affidavit 1*, dated November 15, 2007. The applicant's spouse states that he is uncertain as to whether he will be eligible for residence or allowed to work, and that he doubts he will find any comparable employment and wages in the Philippines. *Id.* He states that he is a complete stranger to the culture, language, and people of the Philippines, and does not speak, read, write or understand any language but English. *Id.* The applicant's spouse states that he has a stable job and benefits in the U.S., working for the same company since 1998 and enjoying medical and dental insurance, a 401K, paid vacation, and sick leave. *Id.* The applicant's spouse states that his medical benefits are essential to his health, and that his "health and medical problems might not be addressed and attended to properly" if he relocates to the Philippines to be with his wife. *Id.* The *U.S. State Department Country-Specific Information: Philippines*, dated February 6, 2009 submitted by the applicant states: "Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. Medical care is limited in rural and more remote areas." The applicant's spouse states that he will "lose points" with his social security contributions and retirement pay which are his 'security blanket in old age" if he abandons his job and relocates abroad. *Id.* He states that he owns his own home and has investments, assets, and bank accounts in the U.S. *Id.* The applicant's spouse states that his roots, friends, co-workers and peers live in the U.S. and he cannot cut his ties with his own country and live somewhere he has never been and knows little about. *Id.* He states that as an American citizen, his life might be endangered in the Philippines where he could be kidnaped for ransom. *Id.* The applicant's spouse references "terrorist activities of the Communist Party and the [redacted] and a bomb attack in [redacted]. *Id.* Country conditions printouts submitted by the applicant confirm the [redacted] bombing, that kidnap-for-ransom gangs sometimes target foreigners, and that the southern island of [redacted] are of particular concern for violence by regional terrorist groups. See *U.S. State Department Travel Warning: Philippines*, dated September 17, 2009 and *U.S. State Department Country-Specific Information: Philippines*, dated February 6, 2009. The AAO notes that the applicant has not asserted the location in the Philippines to which she would relocate if required.

The AAO has considered cumulatively all assertions of hardship to the applicant's spouse including the adjustment to a country, culture, and language so different from the only one he has ever known, separation from his extended family, friends, colleagues, and community ties in the United States, his steady longtime employment in the U.S. and the wages, retirement income, and other benefits carried therewith, his home and business ownership, health and medical concerns, and fears of crime and violence in the Philippines. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to the Philippines to be with the applicant.

Although the applicant has demonstrated that her qualifying relative spouse would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

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. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.