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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

H5

FILE: [redacted] Office: WASHINGTON FIELD OFFICE Date: FEB 18 2011

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of the Philippines who used false documents to enter the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i). She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant was inadmissible under section 212(a)(6)(A)(i), for which no waiver is available, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service August 8, 2008.

Counsel for the applicant's spouse asserts that the Field Office Director's decision was incorrect and that evidence in the record establishes she entered the United States through misrepresentation. Based on this, counsel asserts, she is eligible to apply for a waiver under section 212(i) of the Act. *Form I-290B*, received September 8, 2008.

The record contains, but is not limited to, the following evidence: a statement from the applicant's spouse; a psychological evaluation of the applicant's spouse by Allison L. Hahn, Psy.D.; medical records for the applicant; tax returns and income records for the years 2004 – 2007 for the applicant and his spouse; and an employment letter for the applicant's spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

The record indicates that the applicant presented false documents when entering the United States on June 5, 2000, and thus she entered the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The Field Office Director concluded that the applicant was inadmissible under section 212(a)(6)(A)(i), for which no waiver is available. The applicant admits that she entered the United States using documents bearing another person's name and information, and she has provided sufficient evidence on appeal to support this assertion. As such, she entered the United States by misrepresenting her identity and is inadmissible under section 212(a)(6)(C)(i).

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. The applicant's spouse is the only qualifying relative 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 AAO will first examine hardship upon relocation to the Philippines. Counsel for the applicant asserts that the applicant's spouse would experience extreme hardship if he had to relocate to the Philippines with the applicant. *Brief in Support of Appeal*, received April 29, 2009. He asserts that the applicant's spouse has resided in the United States since a young age and has acculturated to the United States. He also states that the applicant's spouse feels he will not be able to find adequate employment in the Philippines and that his family would likely have to reside in poverty without access to basic necessities such as healthcare and education. He also asserts that most of the applicant's spouse's family resides in the United States and that he has little family in the Philippines. Counsel further asserts that relocation would result in hardship to their oldest son who currently attends Kindergarten in the United States.

The applicant's spouse has submitted a letter asserting that he has a good job in the United States which he would not be able to find if he relocated to the Philippines, and that relocating to the Philippines would mean separation from his immediate family who reside in the United States. *Statement of the Applicant's Spouse*, dated November 29, 2006.

An examination of the record reveals little evidence to support counsel's assertions. There are no country conditions materials or other documentation which establish that the applicant's spouse would be unable to find employment in the Philippines or that his family would not have access to healthcare or education. As noted above, children are not qualifying relatives in these proceedings, as such, any hardship to them is only relevant to the extent that it impacts the qualifying relative, in this case the applicant's spouse. The record does not contain sufficient evidence to establish that any impacts on the applicant's children would rise to such a degree that they would indirectly result in extreme hardship to the applicant's spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

While the AAO sympathizes with the fact that the applicant's spouse has become accustomed to residing in the United States, without evidence to support his assertions the record fails to establish that any impacts on him upon relocation would rise above the common impacts of relocation on family members of inadmissible aliens. The AAO finds that, even when the hardship factors are considered in the aggregate, the record fails to establish the applicant's spouse would experience extreme hardship if he were to relocate to the Philippines with the applicant.

With regard to hardship upon separation, counsel asserts the applicant's spouse would experience emotional and financial hardship if the applicant were removed and her spouse remains. He explains that the applicant is not employed and cares for the family's two children, that the applicant's family has accumulated significant legal fees attempting to resolve the applicant's immigration situation and that if the applicant were removed her spouse would have to re-arrange his life by either working part-time or paying someone to care for his children. He also asserts that the applicant's spouse has been diagnosed with major depression and refers to the psychological evaluation of the applicant's spouse and medical records submitted as evidence.

The applicant's spouse has submitted a statement asserting that his income is barely sufficient to cover the family's expenses, that the applicant shares a close relationship with his family and that the applicant would be unable to find employment or support herself financially if she were removed to the Philippines.

The psychological examination by [redacted] concludes that the applicant's spouse is experiencing significant anxiety and mild depression and that if the applicant were removed he would experience psychological hardship. *Statement of* [redacted], dated May 30, 2007. The record also contains a statement from [redacted], which asserts that the applicant's spouse was

previously diagnosed with Major Depression and placed on medication for his condition. *Statement of* [redacted], February 7, 2007. However the record contains no documentation that the applicant's spouse was diagnosed with Major Depression or that he has been prescribed or is currently taking any medication to treat any mental health condition.

The record contains tax documentation for the applicant's spouse. The tax returns for 2007 and 2006 indicate that the applicant's spouse earned over $50,000 each year. There is no other documentation supporting counsel's assertions that the applicant's spouse would experience financial hardship, such as the cost of childcare or accumulated debt, and as such the record fails to establish that financial hardship would be a significant hardship factor if the applicant were removed.

Even when considered in the aggregate, the hardship factors asserted upon separation are not adequately supported by evidence, and as such the record fails to establish that a qualifying relative would experience extreme hardship if the applicant were removed.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's husband will suffer emotionally as a result of separation from his wife. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. As the record fails to establish extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant warrants a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.