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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

PUBLIC COPY

[redacted]

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DATE: MAY 13 2011 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:

[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,

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 dismissed.

The applicant is a native and citizen of the Philippines who is 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 admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is married to a lawful permanent resident and has a U.S. citizen child and a child in the Philippines. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and to specify the underlying basis for the waiver. *Decision of the Field Office Director*, at 3, dated February 25, 2008. The application was denied accordingly. *Id.*[1]

On appeal, counsel states that the applicant's spouse would experience extreme hardship if the applicant is found to be inadmissible to the United States. *Form I-290B*, at 2, received March 12, 2008.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, medical records for the applicant's spouse, employer letters for the applicant and her spouse, a psychological evaluation of the applicant's spouse, financial documents for the applicant and her spouse, information on cancer, and country conditions information on the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant sought to procure admission to the United State on May 29, 2000 with a C1/D visa. The applicant stated that she was single in her sworn statement to the immigration officer. However, the record reflects that she was married at that time to her current spouse and that he was already in the United States. The AAO notes that the Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now United States Citizenship and Immigration

[1] The AAO notes that the field office director cited 8 CFR 212.7(a)(4) as a basis for denying the Form I-601. The AAO notes that this regulation is meant to limit a waiver to the inadmissibility ground(s) stated (under consideration). It is not written as a requirement for the applicant to state the ground on the Form I-601. The AAO also notes that the field office director's decision listed section 212(h) of the Act as the relevant waiver provision. The relevant waiver provision for a misrepresentation of a material fact is located at section 212(i) of the Act. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). As such, the AAO will review this application on a *de novo* basis in order to determine if the applicant is eligible for a section 212(i) waiver.

Services (USCIS)) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

> A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:
>
> a. the alien is excludable on the true facts, or
> b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The applicant's misrepresentation shut off a line of inquiry which was relevant to her eligibility and may well have resulted in a proper determination that she be found inadmissible (the fact that the applicant was married and her spouse was in the United States is relevant to whether she intended to remain permanently in the United States and would therefore be subject to inadmissibility under section 212(a)(7)(A)(i) of the Act). Therefore, she is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

Section 212(i) of the Act provides that:

> (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 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,* 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 (BIA) 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 BIA 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 BIA 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 BIA 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 BIA 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 the Philippines, 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 first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to the Philippines. Counsel states that the applicant's spouse has lived in the United States for over eight years; he has built a life in the United States; and he has established considerable ties to the community. *Brief in Support of Appeal*, at 9, dated April 10, 2008. Counsel states that the applicant's spouse is an accomplished nurse and would be losing financial opportunities in the United States; he and the applicant provide financial support to their older daughter in the Philippines and the applicant's parents, who suffer from severe medical conditions; the applicant is being treated for goiter, which is potentially cancerous; the applicant's spouse will not be provided medical insurance in the Philippines; treatment in the Philippines is not comparable to that in the United States; the U.S. Department of State country reports provide sufficient proof of lack of opportunities and a lower standard of living in the Philippines; the unemployment rate is 7.4%; and the minimum wage is $7.62 per day. *Id.* at 8-9. The psychologist who met with the applicant's spouse states that he would be returning to the same country that he left to find employment and his sacrifices over the last seven years would be in vain. *Psychological Evaluation*, at 2, dated August 9, 2007. The applicant states that she was diagnosed with goiter; she has a nodule with a follicular lesion and there is a possibility it is cancerous; her spouse has hypertension; and his mother is hemiplegic. *Applicant's Statement*, at 1, undated. The record reflects that the applicant was diagnosed with hyperplastic thyroid nodule with cystic degeneration, thyroid goiter, and acute thyroiditis. *Medical Records*, dated February 12, 2008. The psychologist states that the applicant's spouse suffers from high hypertension and takes medication on a daily basis. *Psychological Evaluation*, at 4.

The AAO notes that the record does not include supporting documentary evidence establishing that the applicant and/or her spouse would be unable to find suitable employment in the Philippines. Going on record without supporting documentation will not 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 record does not include supporting documentary evidence establishing that the applicant and her spouse could not receive medical insurance in the Philippines. The record does not include supporting documentary evidence establishing the applicant's parents' medical issues or the severity of those issues, or the severity of the applicant's and her spouse's medical issues.

Counsel states that the applicant's U.S. citizen daughter and her daughter who has a pending petition may have to abandon their rights to live in the United States, and they will suffer extreme hardship as education is costly and there is gender discrimination in the Philippines. *Id.* at 10. The record does not include supporting documentary evidence of the hardships that the applicant's children may encounter in the Philippines.

The AAO finds that the record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that the applicant's spouse would experience extreme hardship upon relocating to the Philippines.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that his and the applicant's older daughter is about to join them in the United States; their dream is to unite their family; they do not entrust their younger daughter to a babysitter and they keep her at arms length the entire day; and it would break his heart to see their younger daughter separated from the applicant. *Applicant's Spouse's Statement*, undated.

Counsel states that the applicant's spouse depends on the applicant for support in caring for their daughters and he would suffer extreme hardship if he had to raise them as a single parent. *Brief in Support of Appeal*, at 8. Counsel states that the applicant's U.S. citizen daughter will be denied the right to grow up with a mother and her other daughter has a petition that is currently pending. *Id.* at 10.

The psychologist states that separation would completely destroy the applicant and her spouse's marriage; the anguish of being apart would be devastating; the applicant's spouse's manner of coping is to avoid dealing and discussing the issue; he is unwilling to think about separation from his family; his ability to remain detached will fail and he will be flooded with emotions if the applicant and his younger daughter relocate to the Philippines; and he does not have symptoms of anxiety or depression, but the applicant's removal will result in her spouse having generalized anxiety disorder and major depressive disorder, single episode, moderate. *Psychological Evaluation*, at 7-8. The record does not distinguish the applicant's spouse's emotional or parental challenges from those commonly expected from separation.

The psychologist states that the applicant's income would be reduced by fifty percent; and the applicant's spouse would be unable to support the applicant, his two children and the applicant's parents. *Psychological Evaluation*, at 2, 7. The record does not include supporting documentary evidence establishing that the applicant's spouse would be unable to financially provide for his family, such as complete financial records or evidence of expenses.

The AAO finds that the applicant's spouse would experience difficulties due to separation from the applicant, however, the record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that he would experience extreme hardship upon remaining in the United States.

A complete review of the documentation in the record fails to establish that the cumulative effect of hardship would rise to the level of extreme. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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. *See* 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.