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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

[redacted]

Date: NOV 14 2011 Office: SAN JOSE, CALIFORNIA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California. The matter 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 willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated January 15, 2009.

On appeal, counsel contends that the field office director failed to give sufficient weight to the hardships the applicant's husband will suffer if the applicant's waiver application were denied, particularly considering the applicant's husband's age and the length of their marriage.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on November 20, 1999; a declaration from [redacted]; a letter from [redacted] physician; copies of tax returns and other financial documents; a copy of Mr. [redacted] resume; a letter from [redacted] employer; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.[1]

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

Section 212(i) provides, in pertinent part:

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[1] The AAO notes that on the applicant's Notice of Appeal or Motion (Form I-290B), counsel indicated that his brief and/or additional evidence would be submitted to the AAO within thirty days. *Notice of Appeal or Motion (Form I-290B)*, dated February 6, 2009. On August 10, 2011, the AAO forwarded a fax to counsel informing him that this office had not received a brief or additional evidence related to this matter. To date, counsel has not responded to the AAO's fax. Therefore, the AAO will adjudicate the appeal based on the documentation contained in the record.

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant does not contest, that she entered the United States on December 29, 1999, using a B-2 visa under an assumed name. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [redacted], states that in 1975, when he was nineteen years old, he fled Vietnam in a small boat where there was no food or water. He states that he has buried most of the painful memories about his departure from Vietnam and that he was able to restart his life in the United States. He states he became a U.S. citizen in 1980, married his first wife in 1987, and that they had a daughter in 1989. [redacted] states that this marriage did not last and that he became very depressed. According to [redacted], the applicant is the love of his life and brings him sanity and meaning. He contends that he cannot bear the thought of leaving his daughter to join his wife in the Philippines. In addition, he states he is close to his family and that he cannot bear the thought of leaving his two sisters and three brothers and their children. Moreover, [redacted] states he has diabetes, hypertension, and hyperlipidemia and takes prescription medication every day. He contends his health will suffer if he moves to the Philippines to be with his wife. He also contends that he does not speak Tagalog and because his English has a Vietnamese accent, he fears that people in the Philippines will be unable to understand him. Furthermore, [redacted] states he fears being able to find a job in the Philippines considering he is fifty-two years old. *Declaration of* [redacted] undated.

A letter from [redacted] physician states that [redacted] has been a patient at the clinic since at least January 2003 and that he has diabetes, hypertension, and hyperlipidemia. The physician states and that he needs to take medication daily for each of these medical problems and that his diabetes requires that he perform self-monitoring of his blood glucose on a daily basis. In addition, the physician contends that [redacted] needs to follow up with lab work at least every three months. According to the

physician, potential complications of inadequate care for [redacted] medical conditions include stroke, heart attack, blindness, and kidney failure. *Letter from* [redacted], dated September 23, 2008.

After a careful review of the record, the AAO finds that if [redacted] had to move to the Philippines to be with his wife, he would experience extreme hardship. The record shows that [redacted] is currently fifty-five years old and has lived in the United States since 1975. The record shows that he has diabetes, hypertension, and hyperlipidemia, each requiring daily medication and regular medical appointments at least every three months. Although [redacted] has not addressed whether his medical conditions could be adequately treated in the Philippines, the AAO recognizes that relocating to the Philippines would disrupt the continuity of [redacted]'s medical care and the procedures his doctor has in place to monitor and treat him. Moreover, the AAO takes administrative notice that although "[a]dequate medical care is available in major cities in the Philippines, . . . even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States." In addition, medical care in the Philippines is limited in rural and more remote areas. *U.S. Department of State, Country Specific Information, Philippines*, dated May 11, 2010. Moreover, according to [redacted] he does not speak Tagalog and fears he will be unable to find employment in the Philippines. Furthermore, the record shows that he has a daughter from a previous marriage and [redacted] contends he is very close with his siblings and their families, all of whom live near him in California. Considering these unique circumstances cumulatively, the AAO finds that the hardship [redacted] would experience if he had to move to the Philippines is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the family's circumstances, if [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the emotional hardship claim, although the AAO recognizes the hardship [redacted] experienced when immigrating to the United States, the record does not show that his hardship is extreme or that his situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Regarding his medical conditions, there is no suggestion in the record that [redacted] needs or relies on his wife for assistance in any way. Moreover, although the record contains financial documents, the applicant does not make a financial hardship claim and the AAO notes that the applicant has not worked since at least August 2007. *Biographic Information form (Form G-325A)*, dated June 5, 2009 (stating she is a homemaker).

Although the applicant has demonstrated that the qualifying relative, her husband, 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 relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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, 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.