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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: NOV 23 2011 Office: LOS ANGELES FILE: [redacted]

IN RE: [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. The matter 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 having procured admission to the United States 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 live in the United States with his qualifying spouse and children.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated January 6, 2009.

The applicant's attorney provided an appeal brief in support of his waiver application. In the brief, the applicant's attorney asserts that the qualifying spouse will suffer health-related and financial hardships as a result of her separation from the applicant. Further, the applicant's attorney states that the qualifying spouse would not be able to earn a sufficient income to support her family if she relocated to the Philippines. The qualifying spouse also provided a declaration. In her declaration, she indicates that she has lived in the United States for 28 years, has been married to the applicant for over 20 years, and depends on the applicant for financial and emotional support. The qualifying spouse also states that she supports her family in the Philippines and pays for their healthcare, and is experiencing stress due to all her financial obligations and debts.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal brief from the applicant's attorney, a letter from the applicant and qualifying spouse's children, a declaration and letter from the qualifying spouse, United States passports for the qualifying spouse and applicant's children, the qualifying spouse's naturalization certificate, a marriage certificate, medical documentation, financial documentation and other documentation submitted with the Application to Adjust Status (Form I-485). 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.

Section 212(i) of the Act provides that:

> 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 or, *in the case of an alien granted classification under clause (iii) or* (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's wife 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).

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 applicant's qualifying relative is his United States citizen wife. The documentation provided that specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, an appeal brief from the applicant's attorney, a letter from the applicant and qualifying spouse's children, a declaration and letter from the qualifying spouse, United States passports for the qualifying spouse and applicant's children, medical documentation, financial documentation and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney asserts that the qualifying spouse will suffer health-related and financial hardships as a result of her separation from the applicant. Further, the applicant's attorney states that the qualifying spouse would not be able to earn a sufficient income to support her family if she were to relocate to the Philippines. The qualifying spouse also provided a declaration. In her declaration, she indicates that she has lived in the United States for 28 years, has been married to the applicant for over 20 years, and depends on the applicant for financial and emotional support. The qualifying spouse also states that she supports her family in the Philippines and pays for their healthcare, and is experiencing stress due to all her financial obligations and debts.

The AAO finds that the applicant has failed to establish that his qualifying spouse would suffer extreme hardship as a consequence of being separated from him. With regard to the qualifying

spouse's emotional hardships, the record contains a declaration and letter from the qualifying spouse and a letter from the applicant and qualifying spouse's children. In her affidavit, the qualifying spouse states that she counts on the applicant for everything. She indicates that he "manages the household finances, takes care of things around the house, cooks for me after working 14 hours per day, and makes sure that our life runs smoothly." Further, the applicant and qualifying spouse's children indicate that if their father returns to the Philippines "it would be devastating and profoundly difficult" for their mother. However, the record failed to provide sufficient detail to demonstrate the types of the emotional hardships that the qualifying spouse would face if she remained in the United States without the applicant. Similarly, with regard to health-related hardships claimed, the record contains the qualifying spouse's medical records confirming that she has suffered from hypertension and high cholesterol and that she has taken various medications. However, there is no explanation from a physician to indicate the severity of her conditions or which conditions are being treated through the medications she is taking. As such, the record does not establish the severity of the qualifying spouse's medical conditions or any treatment or family assistance needed, or whether she will suffer emotional hardships outside the ordinary consequences of removal.

With respect to the financial hardships, the applicant's attorney asserts that the applicant contributes financially to the expenses and debts owed by the applicant and qualifying spouse. The record contains financial documentation regarding the qualifying spouse and applicant's income, tax returns, debts owed to the federal government and other debts and expenses. In addition, the declaration from the qualifying relative and a letter from her children indicate that the qualifying spouse is experiencing great stress related to her financial obligations and responsibilities, including her children's college tuition and care for her family members in the Philippines. However, the record does not establish that the qualifying spouse is unable to meet her financial obligations in light of her salary. Further, the record does not clearly establish the total amount of financial contributions the qualifying spouse makes towards her children's education, who are now adults and possibly now finished with their university studies. There is also no evidence to establish that the qualifying spouse contributes financially towards her brother or her mother, other than listing her mother as a dependant on her tax return.

However, the applicant has demonstrated that the qualifying spouse would suffer extreme hardship in the event that she relocated to the Philippines. The qualifying spouse has lived in the United States for twenty-eight years and her two children and mother live in the United States. The record contains copies of passports to prove that the qualifying spouse's children are United States citizens. In addition, in her affidavit, the qualifying spouse also asserted that she helps to take care of her elderly mother and that her family in the Philippines relies upon her financially. The record contains tax returns indicating the qualifying spouse's mother is her dependant. The record also includes copies of several money transfers made to the Philippines establishing that the applicant and qualifying spouse send money to their family in the Philippines. The money transfers also lend support to the applicant's attorney's assertions that "it is unlikely [the qualifying spouse] would be able to earn a sufficient income to support her family" in the Philippines, as her own relatives in the Philippines are being supported by the applicant and qualifying spouse. The qualifying spouse also has significant financial obligations in the United States including debts, such as a balance owed to the Internal Revenue Service of the United States, and mortgage payments. The record reflects that it would be financially difficult for the applicant's spouse, considering her expenses and financial

obligations, to relocate to another country. As such, the record reflects that the cumulative effect of the hardships to the qualifying spouse, in light of her family ties to the United States, her length of residence in the United States, and her loss of employment were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, his qualifying spouse would suffer extreme hardship if she relocated to the Philippines with him.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(i) of the Act. 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.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she 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.

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.