**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**



[redacted]

H5

DATE: APR 0 6 2012 Office: MANILA, PHILIPPINES 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:

SELF REPRESENTED

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 (FOD), Manila, Philippines 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 having sought to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The FOD concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 29, 2009.

On appeal, the applicant submits additional evidence of hardship for consideration.

The evidence of record includes, but is not limited to: statements from the applicant; a statement from the applicant's spouse; a psychological evaluation of the applicant; financial documents; and identification and relationship documents. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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:

> (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the

determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

In the present case, the record indicates that in 1998, the applicant applied for an F-1 student nonimmigrant visa and submitted fraudulent documents in support of his application. On October 21, 1998, the applicant submitted a sworn affidavit to the U.S. Embassy in Manila stating that he "presented fraudulent documents" in support of his visa and that the real reason he applied for the student visa was to be able to come to the United States to work. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or misrepresentation. The applicant does not contest his inadmissibility. The applicant's qualifying relative is his spouse, who is a U.S. citizen.

The AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

The applicant states that his wife is employed as a nurse in the United States, financially secure and has no plans to move back to the Philippines. He states that his wife is in excellent physical, emotional, and psychological condition and is able to perform her duties as a registered nurse. The applicant, however, states that the denial of his waiver application would have a negative impact on his wife and her work due to her high expectations that he would join her in the United States. The applicant also expresses concerns about financial hardship. He states that although his wife is financially stable, she would have to make an extra effort to support him in the Philippines. The applicant is employed as a school nurse in the Philippines.

In her statement, the applicant's spouse expresses her concern about not being able to start a family with her husband due to separation. She further states that she has acquired assets in the United States, is financially stable and, therefore, she would like to start a family and raise her children in the United States. The record indicates that the applicant's wife is from the Philippines and she has significant family ties both in the Philippines and in the United States.

The record contains a psychological evaluation of the applicant by [redacted] a psychologist, who evaluated him on October 20, 2009. [redacted] states that the applicant appeared to be fatigued but polite and responsive to questions. [redacted] states that the psychological test results indicate that the applicant has repressed hostility feelings and

aggressive impulses. [redacted] states that the applicant's intellectual functioning is above average and "his emotional pattern reflects intense anxiety and inadequate emotional adjustment."

The record also contains copies of several money transfers from the applicant's spouse to the applicant, and Form W-2, Wage and Tax Statements of the applicant's spouse covering a period of several years. The record indicates that the applicant's spouse's income in 2008 was $116,662.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his qualifying spouse resulting from their separation. The AAO acknowledges that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. We note additionally that the applicant's hardship evidence primarily concerns financial and emotional hardship. However, the record does not demonstrate that the applicant's spouse is experiencing significant emotional or financial hardship as a result of their separation. The record does not indicate how applicant's emotional state is affecting the applicant's spouse. The record indicates that the applicant's spouse has family members in the United States, however, it does not provide details whether she is unable to receive emotional support from them. Moreover, though the record reflects some level of financial support for the applicant, the record lacks evidence demonstrating the applicant's spouse's financial obligations in the United States. The applicant failed to submit evidence demonstrating his spouse's household expenses and how his absence negatively impacts the family financially. The assertions of the applicant and his spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan,* 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). In the absence of supporting evidence, the AAO will not speculate on the applicant's spouse's emotional state or on her financial status and therefore concludes that the applicant has failed to establish that his spouse is experiencing extreme hardship due to separation.

The AAO finds that the applicant has also failed to demonstrate that his spouse would experience extreme hardship if she joins him in the Philippines. The applicant indicates that his wife is financially stable in the United States and that she would not consider relocating to the Philippines. The applicant's spouse is from the Philippines and has significant family ties there. We note that the record fails to provide documentary evidence to establish that the applicant's spouse is unable to obtain employment in the Philippines.

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. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he 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. 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.