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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

H5

Date: APR 0 6 2012

Office: CALIFORNIA SERVICE CENTER

[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 Director, California Service Center, and 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the son of United States citizens and the father of four United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 parents and children.

The Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated August 12, 2009.

On appeal, the applicant, through counsel, contends that United States Citizenship and Immigration Services (USCIS) "abused its discretion in failing to consider the total hardships and [their] cumulative effect on the qualifying relatives." *Form I-290B*, filed September 10, 2009. Additionally, counsel claims that USCIS "erred in drawing conclusions that were based upon misrepresentations and misapplications of the law." *Id.*

The record includes, but is not limited to, counsel's appeal brief, a statement from the applicant's parents, letters of support for the applicant, medical documentation for the applicant's parents, financial documents, and country conditions documents on the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (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 Act is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (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 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 resident spouse or parent of such an alien.

In the present case, the record indicates that on June 18, 1995, the applicant entered the United States on a nonimmigrant visa in someone else's name. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives 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 of Immigration Appeals (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 a statement dated September 18, 2008, the applicant's parents state they do not have a home in the Philippines and no means of support. They claim that they have "significant family ties in the United States," which includes their children and grandchildren. The applicant's parents state they suffer from numerous medical conditions, they receive Medicaid and Medicare benefits in the United States, they could not afford medical treatments and medicine in the Philippines, and some of their medicines are not available outside of the United States. In a letter dated September 16, 2008, [redacted] states the applicant's father suffers from "coronary disease, status post-coronary bypass surgery, hypothyroidism, hypercholesterolemia, hypertension, degenerative joint disease, and allergic dermatosis;" and the applicant's mother suffers from "severe diabetic neuropathy, diabetes mellitus, degenerative joint disease/arthritis, hypertension, and failing vision." Additionally, the applicant's parents state they receive retirement and social security benefits. Further, the applicant's parents state they are afraid to return to the Philippines. The U.S. Department of State warns United States citizens of the risks of terrorist activity in the Philippines. The U.S. Department of State reports that "[k]idnap-for-ransom gangs continue to be active throughout the Philippines and have targeted foreigners, including U.S. citizens. U.S. citizens should exercise caution when traveling in the vicinity of demonstrations, since they can turn confrontational and possibly escalate to violence." *U.S. Department of State, Travel Warning – The Philippines*, dated January 5, 2012. Additionally, the U.S. Department of State notes that "terrorist attacks could be indiscriminate and could occur in any area of the country."

The AAO acknowledges that the applicant's parents are U.S. citizens and that they have been residing in the United States for many years. Based on the record as a whole, including the applicant's parents' age, lack of ties to the Philippines, safety concerns in the Philippines, numerous medical conditions and potential disruption of their medical treatment, and separation from their family, the AAO finds that, considering their hardship in the aggregate, the applicant's parents would suffer extreme hardship if they were to relocate to the Philippines to be with the applicant.

However, the record fails to establish extreme hardship to the applicant's parents if they remain in the United States. In her appeal brief dated October 8, 2009, counsel states the applicant's parents "mentally and physically depend on the support from [the applicant]." Counsel states the age of the applicant's parents is a "compelling factor," they suffer from numerous medical conditions, and given their ages and health conditions, "travel to the Philippines is unrealistic." As noted above, the applicant's father suffers from coronary disease, status post-coronary bypass surgery, hypothyroidism, hypercholesterolemia, hypertension, degenerative joint disease, and allergic dermatosis; and the applicant's mother suffers from severe diabetic neuropathy, diabetes mellitus, degenerative joint disease/arthritis, hypertension, and failing vision. The applicant's father had bypass surgery in 2004 and takes medications for his medical conditions. The applicant's mother had eye surgery in November 2005 and takes medications for her medical conditions. [redacted] claims that "it has become increasingly difficult for [the applicant's parents] to perform even basic functions." Counsel states that "all the children work together in a team effort to support their parents;" however, the applicant, as the eldest, bears "much of the responsibility to care for them." The applicant's parents state because the applicant's income is unstable, their children help the applicant financially and he in turn, helps their parents. They claim that the applicant visits them every day, and he "monitors [their] check-ups, medication and diet." The AAO notes that the record establishes that the applicant's parents rely on the applicant to help care for them; however, the applicant's parents have numerous family members in the United States, and the record does not establish that no other family members are available to provide care to them or that they have no other resources for caregiving.

The applicant's parents assert they are suffering emotionally because of the possibility of being separated from the applicant. Counsel claims that having the applicant removed to the Philippines "would be emotionally devastating" for the applicant's parents. They state "[t]he emotional and psychological impact of losing [the applicant] might hasten [their] demise." Additionally, counsel asserts that special consideration should be given to the applicant's father, who fought under U.S. military command in World War II.

The applicant's parents state the applicant's children "are emotionally fragile" after losing their mother to cancer, and they need the applicant to remain in the United States. The record establishes that the applicant's wife died on April 30, 2007 from cancer. The applicant's parents also claim that the applicant's youngest daughter "will be emotionally devastated if she...lose[s] [the applicant]," and that the harm to his children will extend to them. The AAO acknowledges that the applicant's children may suffer some hardship in being separated from the applicant. However, as noted above, the applicant's children are not qualifying relatives, and the applicant has not shown that hardship to his children has elevated his parent's challenges to an extreme level.

The AAO acknowledges that the applicant's parents may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished his parent's emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant and his parent's expenses; however, this material offers insufficient proof that the applicant's parents are unable to support themselves in the applicant's absence. Additionally, the applicant has not distinguished his parent's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has not established that he would be unable to obtain employment in the Philippines and, thereby, financially assist his parents from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his parents would suffer extreme hardship if his waiver application is denied and they remain in the United States.

Although the applicant has demonstrated that his parents would experience extreme hardship if they relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 relatives 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. *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.