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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: APR 2 4 2012 OFFICE: PHOENIX 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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona, 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 having procured a visa and U.S. admission through fraud or misrepresentation. The applicant is the beneficiary of an approved immigrant petition filed by her lawful permanent resident mother. The applicant does not contest the inadmissibility finding, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her mother.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director,* July 8, 2009.

On appeal, counsel claims that USCIS improperly issued the waiver denial without awaiting additional evidence, which counsel submits with the appeal. In support of the appeal, the applicant's counsel submits documentation including, but not limited to: support letters from family members; a medical letter; naturalization, birth, and death certificates. The record also contains a(n) Application to Register Permanent Residence or Adjust Status (Form I-485), Petition for Alien Relative (Form I-130), Form I-601, and supporting documents. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) 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)(1) of the Act provides:

> 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 [...].

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. resident mother is the

only qualifying relative in this case.[1] 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.*

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[1] Although we note in the record a statement from the applicant's putative spouse claiming their marriage took place on March 13, 2001, in Reno, Nevada, there is no documentation of such a marriage. *Statement of* [redacted] August 7, 2009. As this same statement casts doubt on whether the declarant was even eligible to marry – i.e., whether a prior marriage had ended – and where no other mention exists of the applicant having married or attempted to marry, there is insufficient evidence of a spouse as a qualifying relative. The AAO further notes that if the applicant had entered into a valid marriage, the approval of the I-130 petition filed by her mother would be authmotically revoked.

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 record shows that, during her 2009 adjustment of status interview, the applicant admitted having entered the United States using a visa and passport belonging to another person, thus procured U.S. admission on October 8, 1989 by fraud or misrepresentation. *See Record of Sworn Statement*, May 8, 2009. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

The applicant's mother contends she will suffer emotional and financial hardship if she remains in the United States while the applicant returns to the Philippines due to her inadmissibility as this would cause the loss of the applicant's emotional, moral, and spiritual support. She claims that she has endured medical issues and two tragedies from which only the presence of her children, including the applicant, helped her recover. *Statement of* [redacted] July 6, 2009.

To begin, the record contains little supporting documentation of the emotional hardship that the applicant's mother will experience if separated from the applicant, other than the claims in her own statement, and those of other family members, including three other adult children and a grandchild. These statements and documentation on the record indicate that her husband died in 1994 and her granddaughter died in 2004 in an automobile accident. While mindful of the pain of loss associated with the death of close relatives, we note that the record is silent regarding the qualifying relative's particular needs resulting from these events or how the applicant is able to meet them. The record also contains a letter in which a doctor concludes that the qualifying relative's high blood pressure, osteoporosis, and high cholesterol make it "advisable that her daughter needs to be around for the patient's emotional support and medical needs." *See Statement of* [redacted], July 10, 2009. We note that this letter fails to describe what medical needs must be met, and does not specify which of the qualifying relative's two daughters is indicated, the applicant or her older sister (who filed an affidavit of support as a joint sponsor for the applicant). The record shows that, while the applicant lives in Phoenix, her older sister lives next door to their mother in Los Angeles. Besides showing one adult child nearby, the record reflects that the qualifying relative has two other adult children in the United States. Not mentioned by the doctor is the fact, noted in several support

letters of family members, that the applicant's mother received a hip replacement in 2003. Despite indication that this surgery has limited the qualifying relative's mobility, without further detail from the treating physician concerning the applicant's mother's condition, the AAO is not in the position to reach conclusions concerning its severity or the need for family assistance.

The AAO recognizes that the qualifying relative will endure hardship as a result of separation from her daughter. The situation of the applicant's mother, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. The applicant has not met her burden of establishing that, without the applicant's presence, her mother would suffer hardship beyond the common results of removal or inadmissibility.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes evidence that the applicant's mother has family ties both here and overseas: three other adult children lawfully present in the United States, two sons and two daughters, a grandchild and great-grandchild; and two adult children remaining in the Philippines. She has been a U.S. permanent resident for over 21 years and, while she has never worked here, has received SSI since 1996. The applicant's mother claims that moving to the Philippines to live with her daughter would entail extreme financial hardship. The record reflects that the applicant's mother has received SSI since 1996, but contains no further information regarding her financial resources. Despite her overseas family connections, the applicant's mother asserts she would have no place to live in the Philippines. In addition, she and her children claim her health would suffer from loss of access to the U.S. medical system and that she would be unable to afford health care overseas. Other than statements by family members, the record contains no evidence that any treatment she might need is unavailable in the Philippines and no detail about her expenses here or of the cost and availability of medical care in the Philippines. The evidence is insufficient to establish the applicant's claim that a qualifying relative would experience extreme hardship upon relocating to the Philippines.

While not unmindful that moving overseas would entail challenges, we note that the documentation in the record, considered in its totality, reflects that the applicant has not established her mother would suffer extreme hardship were she to move back to the country where she lived until she was nearly 60 years old. Accordingly, the AAO concludes the applicant has not established that a qualifying relative would suffer extreme hardship were her mother to relocate abroad to continue residing with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. lawful permanent resident mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a relative is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.