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[redacted]

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

U.S. Citizenship and Immigration Services

H5

DATE: AUG 0 7 2012

OFFICE: NEWARK, NJ

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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

> (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.

In the present case, the applicant admitted under oath that on September 6, 1999 she presented a fraudulent passport and visa in the name of [redacted] to immigration officials in order to procure admission into the United States. The applicant also falsely claimed under oath that her name was in fact [redacted] Inadmissibility is not contested on the motion. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. Citizen spouse.

The record also reflects that the applicant was placed in expedited removal proceedings and removed from the United States on September 7, 1999 under section 235(b)(1) of the Act. The record does not reflect that the applicant filed a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, nor does the record show that she disclosed this order of removal to consular officers when she obtained a B-1/B-2 nonimmigrant visa on July 11, 2000. The applicant is therefore also inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i).

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.

The applicant's spouse contends he would experience emotional, financial, and other hardship if he were separated from the applicant. He explains that he would worry about the applicant if she moved back to the Philippines, given that she would be returning to a country where she would face an abusive and threatening ex-spouse. Letters from the applicant's mother and aunt explain that the applicant was in a physically and emotionally abusive relationship with her ex-spouse in the Philippines, that the applicant feared for her life, and finally left the husband in 1999. Counsel asserts in the I-601 appeal brief, previously submitted, that the applicant's spouse relies on the applicant, a registered nurse, due to his cataracts, diabetes, hypertension, and hyperlipidemia. Counsel adds that the applicant's daughter and spouse rely on her for emotional and financial support, indicating that the spouse will have to work extra hours to support his step-daughter and himself without the applicant's income. Counsel explains that the applicant would be unable to find employment in the Philippines because the Philippines is a poor country.

The applicant's spouse reiterates that he is a native born U.S. Citizen, and that he cannot uproot his life to move to a country where he does not speak the language. He explains that all of his family is here, including his step-daughter, and severing such ties by moving to the Philippines would be challenging for him. Counsel adds in the previously submitted brief that not only would the applicant be unable to find employment in the Philippines because of the poor economy, the spouse would have even more difficulty finding employment because of the language and cultural barriers.

The record contains contradictory evidence with respect to the applicant's relationship with her ex-spouse, [redacted] In the motion to reopen, the applicant indicates for the first time that she is afraid to return to the Philippines because she fears her ex-spouse, who was emotionally and physically abusive. The applicant's mother and aunt claim that the ex-spouse abused alcohol and drugs, cheated on her with a co-worker, and took money from the applicant. The applicant's mother adds that the applicant would come to live with her when the relationship deteriorated. The applicant explains that she procured the fraudulent passport and visa in 1999 to get away from [redacted] Aside from the letters from her mother and aunt, the record does not contain evidence, such as police reports, documenting the abusive relationship. Furthermore, the AAO notes that the applicant was removed to the Philippines on September 7, 1999, and obtained a nonimmigrant visa from the consulate on July 11, 2000. There is no assertion or evidence to show that the applicant had any contact with [redacted] during this time period, nor is there any evidence to show that [redacted] would seek out the applicant now, over 10 years after she last left the Philippines. Moreover, on September 6, 1999 the applicant attested under oath that she would not be harmed if she returned to the Philippines, and that she has no fear or concern about being returned to the Philippines. *Sworn statement,* September 6, 1999. In light of this inconsistent evidence of record, the AAO is unable to evaluate whether the applicant's spouse would experience emotional hardship due to concern over the applicant's safety in the Philippines.

The applicant has not submitted evidence on the severity of her spouse's medical conditions, and a description of any treatment or family assistance needed. The applicant has also failed to supplement the record with respect to her spouse's financial hardship upon separation. Without

adequate supporting evidence, the AAO cannot find that the applicant's spouse will experience *economic or medical hardship upon separation from his spouse.*

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, such as emotional distress, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. *In that the record fails to provide sufficient* evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without her spouse.

The applicant's spouse restates in an updated letter that he does not speak Filipino, is unfamiliar with the culture, and does not want to uproot his life and family to relocate to the Philippines. The AAO notes that relocation to the Philippines would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. 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.

In proceedings for a 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 and the application remains denied.

ORDER: The proceedings are reopened; however, the appeal is dismissed and the application remains denied.