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

[redacted]

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DATE: DEC 19 2012 OFFICE: MANILA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Immigration and Nationality Act section 212(i); 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 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 with the field office or service center that originally decided your case by filing a 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

Ron Rosenberg, Acting Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Manila, Philippines, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be granted and the underlying application remains denied.

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 willfully misrepresented a material fact in order to procure a visa to the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen husband. 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 her husband.

The Field Office Director concluded that the evidence presented did not establish that the hardship to the applicant's U.S citizen spouse would rise to the level of extreme as required by the statute. The applicant appealed that decision and the AAO summarily dismissed that appeal on December 14, 2011, in accordance with 8 C.F.R. § 103.3(a)(1) due to the applicant's failure to specifically identify any erroneous conclusion or law or statement of fact in the Field Office Director's decision. The applicant filed a motion to reconsider the AAO decision.[1]

On motion, the applicant states that her U.S. citizen husband will suffer extreme hardship as a result of her inadmissibility.

In support of the waiver application, the record includes, but is not limited to statements from the applicant's husband, statements from applicant's prior counsel, a statement from the applicant, a mental health assessment of the applicant's spouse, country conditions information concerning the Philippines, biographical information for the applicant and his spouse, and documentation of the applicant's immigration history.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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[1] The AAO notes that the regulation at 8 C.F.R. §103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by this regulation.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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.
>
> ...

The applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act as a result of her material misrepresentation regarding her occupation and income when applying for a tourist visa to the United States in 1999. The applicant does not dispute her inadmissibility on motion. The AAO notes that inadmissibility under section 212(a)(6)(C)(i) of the Act is a permanent ground of inadmissibility. The three or ten year period under section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), is not relevant to the applicant's case.

A waiver is available to the applicant under section 212(i) of the Act dependent on her showing that the bar to her admission would impose extreme hardship on a qualifying relative. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative for the waiver under section 212(i) of the Act. Hardship to the applicant will not be separately considered, except as it is shown to affect the applicant's spouse. 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).

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (1) 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.

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 deportation, 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, 885 (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 1292, 1293 (9th Cir. 1998) (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.

On motion, the applicant's U.S. citizen spouse states that the record establishes that the factors when considered in the aggregate establish that he will suffer extreme hardship as a result of the applicant's inadmissibility. He states that the Field Office Director failed to consider each of the factors. In regards to the hardship that he faces as a result of separation from the applicant, the applicant's spouse states that his marriage will be destroyed as a result of separation. As stated above, family separation is a factor considered when determining hardship in the aggregate, but it can also be a common result of inadmissibility. *See Salcido-Salcido*, 138 F.3d at 1293; *but see Matter of Ngai*, 19 I&N Dec. at 247. The unique circumstances of each case must be examined. *Salcido-Salcido*, 138 F.3d at 1293. In this case, the record indicates that the applicant and her spouse have been separated since their marriage in 2005 and that the applicant's spouse, a native of the Philippines, has resided in the United States since 1996. The applicant's spouse states that he suffers hardship because he cannot travel to the Philippines often to visit the applicant due to his need to maintain his income in the United States and care for his mother. The applicant's spouse states that he supports his mother financially, as well as takes her to doctor's appointments and ensures that she receives her medications. He also says that he is important emotionally to his mother. He says that he cannot leave his mother behind as he will "worry about her fending for herself." The AAO notes that the applicant states that her spouse has two brothers and six sisters who also reside in the United States. No evidence has been provided in regards to those individuals or the role that they could play in assisting the applicant's spouse's mother. Additionally, no medical records have been provided to establish the applicant's spouse's mother's condition. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *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 is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The also AAO notes that hardship to the applicant's spouse's mother is relevant in the hardship determination under section 212(i) of the Act only insofar as it is shown to cause hardship to the applicant's qualifying relative, her husband. Here, the applicant's spouse states that being torn between providing for his mother and visiting the applicant has taken a toll on him emotionally. As a result, he says that he is depressed and "an emotional and mental wreck." In support of this statement, the record contains a letter from [redacted] dated March 17, 2008. [redacted] states that the applicant's spouse is suffering from depression as a result of being separated from the applicant. In her letter she states that the applicant's spouse's depression is having a "profound impact on his ability to concentrate while at work, while driving, and doing routine household chores." She also related that the applicant's spouse reported weight gain, stomach aches, heart palpitations, and a skin rash. The AAO notes that no supporting evidence

was submitted to indicate any medical issues concerning the applicant's spouse. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The applicant's spouse has not provided documentation to support the assertion that his mental state has affected his ability to work or care for himself at home. In fact, the applicant's spouse asserts that he cares for his mother in addition to caring for himself. The applicant's spouse also states that he is not sure that he can afford to continue to visit his spouse in the Philippines, however, there is no documentation in the record to support the applicant's spouse assertion regarding his personal finances. Again, although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. at 178. The AAO recognizes that the applicant's spouse is suffering from emotional hardship as a result of the applicant's inadmissibility, but there is no indication that the hardship rises to a level beyond what is normally experienced by individuals separated due to immigration violations. The evidence of record, when considered in the aggregate, does not indicate that the applicant's spouse will suffer from extreme hardship as a result of separation from the applicant.

On motion, the applicant's spouse states that he will suffer economic, professional and emotional hardship that is extreme in the aggregate. He states that if he were to relocate to the Philippines, not only would he lose his job, but he would be separated from his family in the United States and not be able to provide the same level of support to his mother. The applicant's spouse states that he has presented evidence that his bond with his mother is an "extraordinary, strong emotional bond." He also states that his mother is "elderly" and "sick" and longs for the company of her youngest son. The applicant's spouse has not submitted documentary evidence to support this assertion or to support the degree of hardship that he would experience in being separated from his mother. The social worker's report from 2008 does not mention the applicant's spouse's relationship with his mother. Again, although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. at 178. The applicant's spouse also states that he would face problems in the Philippines as a result of the time he has spent in the United States. In particular, he cites a local storekeeper's refusal to sell him a promotional raffle entry. The AAO takes note of the U.S. Department of State Travel Warning for Philippines, dated June 14, 2012, as well as the documentation regarding the safety and economic situation in the Philippines submitted by the applicant. The record also indicates that the applicant's spouse has extensive family ties in the United States and is well established professionally, working as a laboratory assistant at Pacific Medical Laboratory. The applicant's spouse states that he is a Medical Laboratory Assistant and "will be taking licensure examination as a Clinical Laboratory Scientist" for the State of California. He states that he will be able to find employment in the Philippines but

that his income and standard of living will be lower. The AAO recognizes the applicant's spouse's difficult position, however, as stated above the inability to pursue one's chosen profession or obtain a certain standard of living has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch, 21 I&N Dec. at 632-33; Matter of Ige, 20 I&N Dec. at 885*; *Matter of Ngai,* 19 I&N Dec. at 246-47; *Matter of Kim,* 15 I&N Dec. at 89-90; *Matter of Shaughnessy,* 12 I&N Dec. at 813. The applicant's spouse is a native of the Philippines who obtained his education there and, who travels there to maintain a relationship with his spouse. The AAO recognizes the applicant's spouse's difficult situation and the fact that he would suffer hardship if he were to relocate permanently to the Philippines. The record, however, when considered in the aggregate, does not establish that the hardships that the applicant's spouse would face upon relocation would be extreme in nature.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative. administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

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 qualifying relative 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 he merits a waiver as a matter of discretion.

In proceedings for an 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 motion will be granted and the underlying application denied.

ORDER: *The motion is granted and the underlying application denied.*