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]

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DATE: FEB 0 8 2012 Office: SANTA ANA, CA 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 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, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Philippines who entered the United States under an assumed name. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) August 24, 2009.

On appeal, counsel for the applicant's asserts that the Field Office Director's decision was based on an erroneous conclusion of fact. *Attachment Form I-290B*, received August 28, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

The director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having presented false documents in support of a nonimmigrant visa application and subsequently obtaining a visa and admission to the US under an assumed name. The record supports this finding, and the AAO concurs that his misrepresentation was material. The applicant has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant's spouse; pay stubs for the applicant and his spouse; tax returns for the applicant and his spouse; copies of past due notices and collection notices for car loans, medical services and credit card bills to the applicant and his spouse; and copies of birth certificates for the applicant's children.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative 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 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.

On appeal, counsel for the applicant asserts the applicant's spouse would not be able to relocate to the Philippines because she would experience extreme physical and financial hardship. *Attachment, Form I-290B*, received August 24, 2009. He explains that the applicant's spouse is not from the Philippines and thus is unfamiliar with its language and customs, and that her only family resides in the United States. He asserts that they would be unable to afford the airfare for herself and their three children, and that the applicant's spouse would be unable to find employment due to her limited skills and education.

The record does not contain any documentation to support counsel's assertions. There are no country condition's materials, educational documents or other documentation to establish that the applicant's spouse would be unable to find employment. Without evidence supporting counsel's assertions that the applicant's spouse will experience hardship upon relocation to the Philippines, it cannot determine that she will experience any uncommon hardships. 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)). Although the AAO can accept that the applicant's spouse would have to sever some community and family ties, and that she would have to endure some acculturation impacts upon relocation to the Philippines, the AAO does not find these hardship impacts, even when considered in the aggregate, to rise above the common impacts of

relocation on the aliens of inadmissible aliens who relocate. The record does not establish that a qualifying relative would experience extreme hardship upon relocation.

With regard to hardship upon separation, counsel asserts the applicant's spouse will experience physical and financial hardship due to the applicant's inadmissibility. *Attachment, Form I-290B*, received August 24, 2009. Counsel explains that the applicant's spouse has a limited education and work skills, remaining employed at the same place for the last nine years, and that without the applicant's income she would be unable to provide the physical care necessary for their three children or earn sufficient income to support herself and their three children. He states the applicant's spouse fled an abusive home at the age of 15, that her two siblings live in different states and would be unable to assist her, and that she and the applicant are currently paying a friend $1200 dollars in rent. Counsel asserts the applicant's younger daughter needs medical services due to complications from broken bones as an infant and that the applicant's spouse has been diagnosed with ovarian cysts. Finally, counsel explains that the applicant's spouse will be unable to continue her education and improved her employment skills without the applicant present in the United States to assist her.

The applicant's spouse has submitted a statement discussing the hardship impacts outlined by counsel.

The record includes pay stubs and tax returns for the applicant and his spouse, as well as copies of past due notices and collection letters for a number of obligations. The record is sufficient to establish that the applicant's spouse would experience some financial hardship due to separation from the applicant, based on the applicant's spouse's limited income, financial obligations and expenses.

There is little documentation to support counsel's assertions of physical and medical hardships. While there are medical bills submitted into the record, it is not clear what these bills were for or who received any service for the bills. There are no medical records or doctor's statements to corroborate counsel's assertions that his spouse has been diagnosed with ovarian cysts, or that their youngest daughter have been experiencing any medical conditions. Counsel informally requested additional time to submit these documents in the Attachment to the Form I-290B, but as of this date no additional documentation has been received. As such, the record does not establish any medical condition or hardship for the applicant's spouse or indirect hardship from a medical condition of a child. However, the AAO acknowledges that the applicant's spouse would experience some hardship in raising three children without the applicant's assistance.

The AAO finds that when the hardships to the applicant's spouse, including financial hardship and the difficulty in raising three children on her own, are considered in the aggregate, they rise to the level of extreme.

Although the AAO finds the record to establish that the applicant's spouse would experience extreme hardship as a result of separation form the applicant, the AAO 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.