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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

[redacted]

H5

DATE: JAN 18 2012 Office: SAN FRANCISCO, 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, San Francisco, 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 misrepresented her marital status when entering the United States under a B-2 visitor's visa. 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). She 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) August 11, 2009.

On appeal, counsel for the applicant's spouse asserts that the applicant states that she was confused and naïve, did not intend to deceive the service with regard to her marriage and that the applicant's spouse and the applicant's children will experience extreme hardship due to the applicant's inadmissibility. *Attachment, Form I-290B*, received September 1, 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 record establishes that the applicant failed to disclose that she was married when she applied for her B-2 visa to enter the United States in December 1998. *Form I-215W, Record of Sworn Statement in Affidavit Form*, dated December 1, 2008. The failure to reveal that she was married cut off a line of inquiry which may have led to the denial of the visa. Having a spouse that is a U.S. citizen was material because it would have revealed her true intent to reside in the United States rather than enter as a tourist. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Counsel asserts on appeal that the applicant and her spouse were young and naïve, that it was not their intent to deceive United States Citizenship and Immigration Services and that the way she and her spouse entered the United States was a "mistake". *Attachment, Form I-290B*, received September 1, 2009. The applicant was 32 years of age at the time she entered the United States, and thus could not be considered too young to understand the consequences of her action. The record contains a sworn statement from the applicant that she failed to disclose the fact that she was married when applying for her B-2 visa, and as such willfully misrepresented a material fact. Based on these findings the AAO concludes that the applicant is inadmissible pursuant to 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: a brief from counsel; a Psychological Evaluation of the Abarado Family, dated February 13, 2009; a statement from the applicant's spouse; a copy of an unemployment claim by the applicant's spouse; an employment letter for the applicant; and documents filed in relation to the applicant's Form I-130.

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 that the applicant's spouse would experience emotional and financial hardship upon relocation to the Philippines. *Attachment, Form I-290B*, received September 1, 2009. Previously counsel asserted that the applicant's spouse, who is 52 years of age, would not be able to find employment to support himself in the Philippines because his skills and experience earned in the United States would not transfer into that economy, and that the applicant's spouse would have to leave behind all of his immediate relatives who now reside in the United States.

The applicant's spouse previously submitted a letter stated that neither he nor the applicant would be able to find employment to sustain themselves in the Philippines, that his children are Americanized and would not be able to adjust to the Philippino educational system and that they need the health insurance obtained through the spouse's employment because they are aging and developing medical conditions. *Statement of the Applicant's Spouse*, February 20, 2009.

The record does not contain sufficient documentation which corroborates the assertions that the applicant's spouse would be unable to find employment in the Philippines. The record does contain previously submitted letters of employment for both the applicant and her spouse, but these letters are not evidence that the applicant and her spouse would be unable to find employment in the Philippines. Moreover, the AAO notes that the inability to pursue a chosen profession does not constitute an uncommon hardship for the purposes of this proceeding. *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996). Although the applicant's spouse asserts he is beginning to struggle with high cholesterol and needs the health insurance provided by the applicant's U.S. employment, the record lacks any documentation that he is experiencing high cholesterol or that the applicant and her spouse would be unable to obtain health insurance in the Philippines or medical treatment for any particular conditions.

The applicant's spouse asserts their children would suffer hardships in the Philippines. However, the AAO notes that children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant as it indirectly impacts the qualifying relative, in this case the applicant's spouse. There is insufficient documentation to establish that the applicant's children would experience uncommon hardships to a degree that would create a hardship factor on the applicant's spouse.

The AAO acknowledges the long term residence of the applicant's spouse in the United States, as well as the family ties the applicant's spouse has in the United States. However, the AAO also notes that the applicant's spouse is also a native of the Philippines and would be familiar with its language and customs. When the hardships asserted upon relocation are examined in the aggregate, they fail to establish that the applicant's spouse would experience uncommon hardship to a degree constituting extreme hardship.

With regard to hardship upon separation, counsel for the applicant asserts that the applicant's spouse will experience extreme emotional and financial hardship due to the applicant's inadmissibility. *Attachment, Form I-290B*, received September 1, 2009. Counsel explained in a previous statement that the applicant's spouse has been diagnosed with depression, is currently unemployed and financially dependent on the applicant and noted that the applicant and her spouse have been married and residing in the United States for the last 10 years.

The applicant's spouse submitted a letter previously in which he asserted that his children would experience hardship due to the applicant's inadmissibility because they will not be able to continue their education and would be emotionally impacted by the absence of the applicant, their mother.

The record contains a psychological evaluation of the applicant's spouse by [redacted] dated February 13, 2009. In her examination she interviews the applicant and her family, narrating their responses and concluding that the applicant's spouse does not appear to be suffering from a diagnosable mental health condition at the time, but that he appears emotionally dependent on the applicant.

This evidence in insufficient to distinguish the emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States. While the AAO recognizes that the applicant's spouse will experience some emotional impact due to the applicant's removal, without evidence which distinguishes that impact from the common results of separation the AAO cannot determine that emotional impact is an uncommon hardship factor in this case.

With regard to financial hardship, the record does not contain sufficient evidence to establish any uncommon financial impact upon departure of the applicant. While the record contains employment letters for the applicant and an unemployment insurance claim for the applicant's spouse, the AAO notes that there is no evidence that the applicant's spouse would be unable to find additional employment or that he is currently unable to meet his financial obligations. The AAO also notes that one of the applicant's children is now considered an adult, and that the applicant's spouse has immediate family members who reside in the United States and there is no evidence that they would be unable to mitigate the impact of the applicant's departure. Based on these observations the AAO cannot determine that the applicant's spouse will experience financial impact to such a degree that it would constitute an uncommon hardship factor in this case.

Even when the hardship factors asserted on separation are examined in the aggregate, the record fails to establish that they rise above the common hardship impacts upon separation and as such do not constitute extreme hardship.

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 husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's may experience some emotional and financial impact as a result of separation from the applicant. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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.