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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: JUL 10 2012 Office: SAN DIEGO, CA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and 212(i) of the 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

DISCUSSION: The waiver application was denied by the District Director, San Diego, California. The matter 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)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and section 212(i) of the Act in order to reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated July 23, 2010.

On appeal, counsel contends that the district director failed to consider all of the evidence in its totality and that the applicant established extreme hardship to her husband, particularly considering his strong family ties in the United States, his long-time residence in the United States, and country conditions in the Philippines.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [redacted] indicating they were married on April 19, 2008; an affidavit from Mr. [redacted]; a psychological assessment of Mr. [redacted] copies of tax returns, pay stubs, and other financial documents; a letter from Mr. [redacted] employer; a Country Profile of the Philippines; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) *In general.* - Any alien (other than an alien lawfully admitted for permanent residence) who -

. . . .

> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) *Waiver.* – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is

> the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> *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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant gave birth to her son, [redacted], in the Philippines on May 1, 2003. Mr. [redacted] is listed on the child's birth certificate as the father. According to interview notes from the applicant's adjustment interview, the applicant and Mr. [redacted] were living together in the Philippines, but did not get married because Mr. [redacted] mother filed a petition for alien relative on his behalf. The record shows that Mr. [redacted] moved to the United States in 2004. The record further shows that the applicant entered the United States on September 9, 2005, as a C-1/D crewmember. A copy of her visa in the record names the vessel as the "MV Regal Voyager." The applicant gave birth to the couple's second child, Nathan, in the United States on [redacted], and the couple married on [redacted] Both the applicant's and her husband's Biographic Information forms (Form G-325A) in the record state that they have been living together since January 2004. Moreover, the record shows that Mr. [redacted] became a naturalized U.S. citizen in July 2009, and the applicant filed for adjustment of status based on her marriage in August 2009. While the adjustment application was pending, the applicant departed the United States pursuant to an authorization for advanced parole. The applicant was paroled back into the United States and continues to reside in the United States.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an alien who leaves the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act does not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance

parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States to pursue a pending application for adjustment of status. In accordance with the BIA's decision in *Matter of Arabally,* the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

With respect to whether or not the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, the applicant contends she did not commit fraud. According to the applicant, she relied on her recruiter's representation and was promised she could work in the United States for fifteen months. She states that Mr. [redacted] refused to support her idea of working in the United States because he wanted her to stay in the Philippines to care for their child. The applicant states that "[her] real purpose in coming to the US on September 9, 2005 was to work." She claims it was never her understanding that she was limited to only working on a cruise ship. She contends she was "constantly told by [her] recruiter that [she'd] be working as a caregiver for 15 months [and that t]hey never told [her] that [her] visa was to work only as a crewman on [a] ship."

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds the applicant has not met her burden of proving she is admissible to the United States. The applicant has not provided any competent, objective evidence to support her contention that she did not willfully misrepresent a material fact to enter the United States. She has not provided any specific details regarding the alleged recruiter she relied on, and her husband does not address the time before she entered the United States despite her contention that he did not support her entering the United States to work.

The Department of State Foreign Affairs Manual states that, "[i]n determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application or to an immigration officer when applying for admission. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, . . . [a]pply for adjustment of status to permanent resident. . . ." *DOS Foreign Affairs Manual,* § 40.63 N4.7(a)(1). The Department of State developed the 30/60-day rule, which states that "[i]f an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 [including seeking unauthorized employment

or taking up permanent residence] within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry." *Id.* at § 40.63 N4.7-2.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In the case at hand, immediately after entering the United States using a nonimmigrant crewmember visa, the applicant moved in with Mr. [redacted] with whom she already had a child. Although the applicant's visa explicitly indicates she was to be a crewmember of the MV Regal Voyager, there is no indication the applicant has ever had any intention of being a crewmember, but rather, took up permanent residence with Mr. [redacted] and sought employment. Because the applicant took up permanent residence and employment within thirty days after entering the United States using a C1/D visa, there is a presumption she misrepresented her intention to enter the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, Mr. [redacted] states that the fear of losing his wife is paralyzing, that she is his soul mate, and that there is no way to function without her. He contends his own parents separated when he was three years old and that he was raised by a nanny for eighteen years of his life. He states he does not want his children to face the same kind of ordeal that he faced. He states his family has been very concerned about him because he is depressed and constantly anxious. He contends he has experienced countless nights that he was unable to sleep at all, and there are times he has nightmares. According to Mr. [redacted], he feels out of control and fears losing his job because he is unable to focus. In addition, he states that his wife is also employed and financially contributes to the family. He states there are no job opportunities for him in the Philippines.

After a careful review of the record, there is insufficient evidence to show that Mr. [redacted] will suffer extreme hardship if his wife's waiver application were denied. Although the AAO is sympathetic to the family's circumstances, if Mr. [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the emotional hardship claim, although the record contains a psychological assessment of Mr. [redacted], the psychologist states only that Mr. [redacted] is displaying depressed and anxious symptoms due to stress. To the extent the psychologist contends that Mr. [redacted] has stress-related ulcers, high blood pressure, and asthma, there is no evidence in the record to corroborate this claim and Mr. [redacted] himself fails to mention any medical problems. Therefore, the record does not show that Mr. [redacted] separation from his wife is unique or atypical compared to other individuals separated as a result of inadmissibility of exclusion. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond

that which would normally be expected upon deportation). Regarding financial hardship, although Mr. [redacted] contends his wife works and financially contributes to the family's expenses, there is no evidence addressing the applicant's employment or income and, according to her Form G-325A, she has been unemployed since July 2006. In addition, the AAO notes that Mr. [redacted] submitted two Form I-864's, affirming he would financially support the applicant based on his annual salary alone of over $66,000. Even considering all of the evidence in the aggregate, there is insufficient information in the record to show that Mr. [redacted] would suffer extreme hardship if he decided to remain in the United States without his wife.

Furthermore, the record does not show that Mr. [redacted] would suffer extreme hardship if he returned to the Philippines to be with his wife. The record shows that Mr. [redacted] was born in the Philippines. There are no letters from any friends or relatives in the record and, aside from an employment verification letter from his employer, there is no evidence in the record showing that Mr. [redacted] has strong community ties in the United States. Although the record contains a description of country conditions in the Philippines, Mr. [redacted] does not specify why he believes he would be unable to find employment in the Philippines and the article does not substantiate this claim. Moreover, there is no evidence Mr. [redacted], or either of the couple's children, suffers from any physical or mental condition that would make his readjustment to living in the Philippines any more difficult that would normally be expected under the circumstances. The AAO also notes that it appears from Mr. [redacted] affidavit that one of the couple's two sons is currently living in the Philippines and, according to the psychologist, both children lived in the Philippines without either of their parents from 2006 to 2009. *Affidavit of* [redacted], dated December 18, 2009 (stating that the applicant is the primary caregiver to their son and that if she returns to the Philippines, she and their "son over there" would survive only on the little money he could send her). Therefore, returning to the Philippines may reunite the family and, in any event, the record does not show that returning to the Philippines would cause Mr. [redacted] hardship that would be extreme, unique, or atypical compared to other individuals in similar circumstances. *See Perez v. INS, supra.* Considering all of these factors cumulatively, the AAO finds that there is insufficient evidence to show that the hardship Mr. [redacted] would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.