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

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Date: JUN 20 2012 Office: LOS ANGELES 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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He does not contest this finding of inadmissibility, but rather, seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director,* April 7, 2009.

On appeal, counsel for the applicant asserts that USCIS misapplied the law in finding the applicant had not shown undue hardship to a qualifying relative. In support of the waiver appeal, counsel submits a brief and a Notice of Approval of a Form I-130 petition. Documentation already on record includes, but is not limited to: supporting statements from the applicant and his wife; naturalization, marriage, divorce, and birth certificates; a replacement Form I-94 Arrival record; a psychological evaluation and medical information; financial information, including tax returns, W-2 forms, and 1099 forms, as well as a residential lease and insurance information. The entire record was reviewed and considered in rendering this decision.

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

> 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)(1) of the Act provides:

> 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 [...].

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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.

The record shows that the applicant entered the United States on June 11, 1993 with fraudulent documents in the name of another person, was admitted for six months in B-2 visitor status, and has not departed. On November 17, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) concurrently with his wife's Form I-130.

The applicant contends his wife will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. Counsel asserts that the stress imposed by thoughts of possible separation from the applicant has caused his wife to suffer hypertension and depression. The applicant's wife claims that removal of the applicant will make it impossible for her to cover living expenses for herself and her children.

The applicant's wife states separation from her husband will represent loss of her life companion and co-parent to their children, and the applicant expresses similar sentiments. She claims her health will deteriorate without her husband to care for her and provide security for the family. In support, counsel provides a psychological evaluation diagnosing the applicant's wife with depression and anxiety at the thought of separation. The evaluation notes that, despite the couple's complementary relationship and shared responsibility for child rearing, the applicant's wife depends on her husband for decisions, guidance, and security. Although describing the qualifying relative's mental health symptoms as mild to moderate responses to stressful situations, the report concludes that, "[i]f this situation were to become permanent, and her spouse not be able to protect [her] and her family, then the symptoms of anxiety and depression would completely overwhelm [the qualifying relative's] ability to cope with the stressors." *Adult Psychological Evaluation Report*, October 8, 2008.

As for the predicted financial hardship, the psychologist and the qualifying relative report that the qualifying relative is dependent on her husband. Counsel clarifies that, while the applicant's income exceeds his wife's, her job provides health insurance for the family. The record shows her earning from $30,000 to $34,000 in 2007-2008, and there is no indication she could not support the family if the applicant departed. Other than a residential lease and car insurance statement, there is no information regarding household expenses and other debts. While the record suggests the applicant's night shifts complement his wife's daytime work by allowing one parent to be available at all times, it contains no claim of the actual childcare expense saving involved.[1]

[1] The record shows that the children attend school, but contains no details. The qualifying relative states that she works past 5:00 p.m. daily, but does not indicate what after school care options she has considered other than a babysitter.

The applicant's wife contends that, besides incurring childcare costs if her husband leaves the country, she will also encounter additional medical costs because her insurance policy will not cover him overseas; she asserts that, even if he finds employment in the Philippines, most employers there do not offer health insurance, and she is unable pay out-of-pocket his medical costs. She claims that, in addition to requiring medication for hypertension and high cholesterol, the applicant needs surgery for a thyroid condition. These claims are all unsubstantiated and, in addition, there is no evidence on record that the applicant's health requires medication or surgery, or of the cost or availability of these treatments where he would relocate. The record contains copies of medical records using medical terminology and abbreviations that are not easily understood. 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 needed, the AAO is not in the position to reach conclusions about the severity of a medical condition or the treatment needed.

The evidence on record, when considered in the aggregate, fails to establish that the emotional and financial hardship the applicant's wife would experience if she were to remain in the United States without the applicant would rise to the level of extreme. Based on one visit with the family, the psychologist identified only mild to moderate current symptoms of depression and anxiety and specified no treatment as needed, yet predicted severe consequences if the applicant leaves. Regarding the speculative nature of this report, we note that the qualifying relative claims to have an extensive support network of close family members – including her parents, four siblings, aunts, uncles, and cousins, as well as the applicant's parents and sister – in place to help her cope with the feelings of loss associated with separation from a family member. Financial evidence shows her to be gainfully employed, while claimed medical problems and costs are largely unsubstantiated.

The applicant also contends that his qualifying relative would suffer extreme hardship in the event that she relocated to the Philippines with the applicant. She claims extensive ties to the United States, where she received her nursing education, works in the medical field, and has lived for over 18 years. She says her entire immediate family is here, including her mother, stepfather, and four siblings, all of whom are U.S. citizens, as well as aunts, uncles, and cousins; counsel states that the applicant's parents and sister also live nearby. Faced with moving back to the country she left while a teenager, the applicant's wife identifies her main concern as lack of remaining ties there. The record is silent regarding her job prospects, with the only mention of employment being her claim that Philippine workers generally receive no health insurance benefits as a job benefit. Counsel contends that the qualifying relative provides care for her mother, such as taking her to medical appointments, but provides no evidence regarding the mother's condition, treatment needs, or availability of other family members to render this help. Similarly unsupported by evidence is counsel's claim that the qualifying relative's son has medical conditions for which insurance covers treatment in the United States that she herself would have to pay for overseas.

Therefore, regarding the impact on a qualifying relative of relocating abroad, the record contains little documentary evidence of the claimed adverse consequences of returning to the land of her birth. Other than unsupported claims regarding medical insurance, there is little indication of the financial effect of moving overseas. Nor does the record show that the applicant's wife has any medical condition for which treatment would be unavailable. Due to evidentiary shortcomings, the

record does not reflect that the cumulative effect of the her claimed ties to the United States and absence of ties in the Philippines, her residence in the United States, and her loss of employment, were she to relocate to the country where she was born and lived until the age of 18, rises to the level of extreme. Based on a totality of the circumstances, the AAO concludes the applicant has not established that his wife would suffer extreme hardship were she to relocate to reside with the applicant.

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 qualifying relative will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. The AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is dismissed. The waiver application is denied.