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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

PUBLIC COPY

[redacted]

H5

Date: MAY 25 2012 Office: MANILA, PHILIPPINES FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (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 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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Manila, Philippines. 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)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her mother in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated April 22, 2010.

On appeal, counsel contends the applicant established extreme hardship, particularly considering her mother's health problems and country conditions in the Philippines.

The record contains, *inter alia*: an affidavit from the applicant; an affidavit from the applicant's mother, [redacted]edical records; a mental health assessment of [redacted] articles addressing country conditions in the Philippines; 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)(6)(C)(i) of the Act provides:

> 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 in 1988, the applicant's grandmother petitioned for the applicant for an F2B visa as an unmarried daughter of a lawful permanent resident. The applicant concedes

she presented a fraudulent birth certificate indicating she was her grandmother's daughter rather than her granddaughter. Therefore, the record shows that 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. The AAO notes that although counsel contends in his brief that the applicant made a timely retraction of this misrepresentation, counsel does not contest the applicant's inadmissibility. Rather, counsel requests that the applicant's propensity for telling the truth should be seen as a positive factor and explains that the applicant was under twenty-one years old at the time, was acting under the instructions of other adults, and eventually admitted the truth at a subsequent interview.

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 mother, [redacted] states that she has been separated from her daughter for a long time and wants to be reunited with her. According to [redacted], the applicant and the applicant's son are the only family members remaining in the Philippines. [redacted] states that her other three children reside lawfully in the United States. In addition, [redacted] states that she had bypass surgery, has been hospitalized on several occasions, has osteoporosis, and has severe anxiety. She contends her health problems make it impossible for her to work and if her daughter's waiver application were denied, she will suffer extreme financial hardship. Moreover, [redacted] states that her daughter [redacted] suffers from serious mental retardation and major depression. [redacted] states she needs the applicant's help in caring for [redacted]. Furthermore, [redacted] contends she cannot return to the Philippines because of her medical problems. She states that if she returned to the Philippines, she would have to seek employment, which would be impossible given her age and health problems.

After a careful review of the record, the AAO finds that if [redacted] moved back to the Philippines, where she was born, to be with her daughter, she would experience extreme hardship. The record shows that [redacted] is currently sixty-three years old and copies of her medical records indicate she has numerous medical conditions. Specifically, [redacted] had coronary bypass surgery in September 2005 and has hypertension, hypothyroidism, osteopenia, anxiety, dyspnea, hyperlipidemia, asthma, carpal tunnel syndrome causing hand numbness and awakening her at night, low back pain, left leg pain and numbness, and arteriosclerotic heart disease. The record also shows that in addition to being hospitalized for a catheterization procedure and coronary bypass surgery, she was also hospitalized in September 2005 for vertigo not related to her cardiac condition and again in April 2009 for chest discomfort, corroborating [redacted]s claim that she has been hospitalized several times. In addition, the record shows she has been on multiple prescription medications for years. The record also contains a psychological assessment of [redacted] stating that she has been depressed since September 2005 when she had heart surgery. According to the social worker, [redacted] has a history of depression and previously had depression when she was forty-six years old after her husband left her, and saw a psychiatrist when she was forty years old. The social worker diagnosed [redacted] with Adjustment

Disorder with Depression and Anxiety. A separate psychiatric evaluation in the record diagnosed [redacted] with Major Depression. The psychological assessment and the psychiatric evaluation in the record note that [redacted] has an adult daughter with mental retardation who she has been caring for the past thirty-two years, the daughter's entire life, corroborating [redacted]s claim that she has a daughter with mental retardation. In addition, the record contains numerous articles supporting [redacted]s fears about returning to the Philippines due to major flooding. The AAO also takes administrative notice of the U.S. Department of State's Travel Warning, warning U.S. citizens of the risks of terrorist activity in the Philippines as well as the risks of kidnap-for-ransom gangs. *U.S. Department of State, Travel Warning, Philippines*, dated January 5, 2012. Considering all of these factors cumulatively, the AAO finds that the hardship [redacted] would experience if she relocated to the Philippines to be with her daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her daughter. Although the AAO is sympathetic to the family's circumstances, if [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. Although the record shows [redacted] has a history of depression, neither the psychological assessment nor the psychiatric evaluation address what effect, if any, separation from the applicant has on [redacted] Neither document shows that the applicant's situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Although [redacted] makes a financial hardship claim, there are no financial documents in the record to substantiate her claim. Regarding [redacted] contention that she needs the applicant's assistance to care for [redacted], there is no letter in plain language from any health care professional addressing [redacted]s condition. There are also no letters from any other family members addressing [redacted]s needs, how [redacted] is handling caring for her, or whether the applicant would be of any assistance in caring for [redacted]. [redacted] does not address how she has managed to care for [redacted] entire life without the applicant's assistance. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. In sum, even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that [redacted] would suffer extreme hardship if she decided to remain in the United States without the applicant.

We 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme

hardship from separation, we cannot find that refusal of admission would result in extreme hardship to [redacted], the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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, 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.