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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 12 2013 Office: SAN FRANCISCO 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The record reflects that the applicant entered the United States in 1994 bearing a passport and visa in another name. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse and lawful permanent resident father.

The field office director found that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 10, 2011.

On appeal the AAO determined that the applicant had established that his qualifying relatives would experience extreme hardship if they were to relocate abroad to reside with the applicant, but had failed to establish that his qualifying relatives would experience extreme hardship if they were to remain in the United States while the applicant resides abroad due to his inadmissibility. *See Decision of the AAO*, dated October 24, 2012.

On motion counsel asserts the waiver was denied in error and that necessary documents were submitted. In support of the motion counsel submits a psychological evaluation of the applicant's spouse and financial documentation. The record contains a brief; affidavits from the applicant and his father; letters from the applicant's family; and a letter from the physician for the applicant's father. The entire record was reviewed and considered in rendering this decision.

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

> (i) 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) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 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. The applicant's spouse and father are the only qualifying relatives 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 its decision dated October 24, 2012, the AAO found that the applicant had established extreme hardship to his spouse and father were they to relocate abroad to reside with the applicant as a result of his inadmissibility. As such, this criterion will not be re-addressed on motion. In the same decision, however, the AAO concluded that the applicant had failed to establish that his qualifying relatives would suffer extreme hardship were they to remain in the United States while the applicant relocated abroad. Specifically, the AAO noted that no supporting documentation or detail had been provided in regards to the spouse's emotional hardship, that she has close family ties in the United States to offer emotional support, and that the record was unclear whether the spouse required the applicant's assistance financially or with child care. In addition, the AAO concluded that although the applicant's father indicates he relies on the applicant to take him to medical appointments, the applicant had failed to establish his father could not find alternative methods of transportation.

A psychological assessment submitted on motion states that the applicant's spouse would be harmed psychologically if the applicant returns to the Philippines. It states that the applicant's spouse is not currently working outside the home and that the applicant is supporting the family as a self-employed construction worker. It states that the spouse fears separation from the applicant as she was traumatized in 2005 by her first husband's affair with another woman that led to their divorce. The assessment states that the applicant's spouse turned to her parents to talk her through her trauma and grief. It also states that her relationship with the applicant was healing. The assessment states that the applicant's spouse reports being physically and emotionally dependent on the applicant, that her psychological dependency makes her vulnerable, and that she could be re-traumatized by separation, leading to an episode of depression and PTSD of greater severity than the earlier episode and making her unable to function at a job or in her role as a mother. The assessment states that the applicant had experienced similar trauma when his first spouse left him for another man, making him depressed by loss and betrayal.

The applicant contends his spouse depends on his income for household expenses and the mortgage and that she and their children would suffer emotionally without him as he is an active, involved

husband and father. The applicant asserts that his spouse would be traumatized to lose him and that it is not feasible to accompany him to the Philippines because she works and both their families live in the area.

The applicant's father states that due to his health he is unable to drive so he needs the applicant as his other six children are too busy.

The AAO finds that the applicant has failed to establish that his qualifying spouse or parent will suffer extreme hardship as a consequence of being separated from the applicant. The applicant submitted a psychological assessment of his spouse, but the report does not establish that the hardships the applicant's spouse would experience are beyond those normally associated when a spouse is found to be inadmissible. The assessment, stemming from two interviews in 2012, refers to the spouse's trauma and episode of major depression in 2005, when her then-husband had an affair with another woman. The record contains no other reference to the spouse's earlier trauma or any other psychological condition prior to that 2012 assessment and no further documentation concerning this episode and related symptoms that occurred in 2005. Further, the assessment states that the spouse's parents had talked her through her grief, and the record indicates that the applicant's spouse has a large family network living in close proximity to her for emotional support. The AAO recognizes that the applicant's spouse will endure some hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. Nor has it been established that the applicant's spouse would be unable to travel to her native Philippines to visit her husband.

Counsel and the applicant also indicate that the applicant provides financially for the qualifying spouse. The record, however, does not substantiate this assertion as the only documentation of the applicant's income is 2011 tax information showing he earned $5,500. The record contains income tax information for the spouse from 2008 through 2011 with the psychological assessment indicating that in 2012 she was not working and financially depending on the applicant. No documentation has been submitted establishing the spouse's current expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States she will experience financial hardship. It has also not been established that given her previous work experience and educational training the applicant's spouse would be unable to find employment, or that she would be unable to find childcare to allow her to work. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

As noted above, the AAO had concluded that although the applicant's father indicates he relies on the applicant to take him to medical appointments the applicant had failed to establish that his father could not find alternative methods of transportation. On motion this deficiency has not been addressed as no additional information was submitted. No evidence has been submitted to show that without the applicant his father would be unable to go to medical appointments, particularly given the large immediate family living nearby.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse and father are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse and parent.

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 the qualifying relatives.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse and father as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted and the prior AAO decision is affirmed.