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

(b)(6)

[redacted]

DATE: FEB 14 2013 OFFICE: MANILA 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.

Thank you,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, the Philippines, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The applicant's motion to reopen and motion to reconsider were granted, but the underlying application remained denied. The matter is again before the AAO on motion. The motion will be granted and the underlying application approved.

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 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to qualify for an immigrant visa to live in the United States.

The officer-in-charge 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 Officer-in-Charge* dated March 9, 2007. On appeal, the AAO found that, while the applicant had established a qualifying relative would suffer extreme hardship due to separation from the applicant, he had failed to show that extreme hardship would be imposed on a qualifying relative who relocated to the Philippines to reside with the applicant. *Decision of the AAO* dated January 7, 2010. In response to the applicant's motion, the AAO determined that he had not shown a qualifying relative would experience extreme hardship from relocation. *Decision of the AAO,* April 4, 2012. The applicant's counsel has again moved for the AAO to reopen and reconsider its decision on the issue of extreme hardship from relocation.

In support of the motion, the applicant's counsel submits a brief and new evidence, and again asserts that USCIS failed to give proper weight to the evidence. The record consists of the supporting documents submitted with filings including the Form I-601, the appeal of the waiver denial, the initial motion, and the current motion. 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 [...].

The record shows that the applicant sought to obtain an immigrant visa through fraud or misrepresentation during consular processing in early 2005. It is undisputed that the applicant indicated to U.S. government officials he had never been married and, when confronted with proof of marriage, stated the marriage had been annulled, but that he had not brought proof of the annulment. On March 15, 2005, during his second embassy visit, the applicant produced the previously unavailable annulment document. When interviewed by the consulate's anti-fraud unit, he admitted under oath that: he was married in a 1999 civil ceremony and the marriage had not been terminated, the annulment document was fake, and he willfully and knowingly claimed to be single in order to qualify for a visa as the unmarried son of a lawful permanent resident. Although the applicant nominally maintains he was not complicit in obtaining the fraudulent annulment document, he provides no new evidence on this issue. Rather, he asserts entitlement to a waiver of inadmissibility based on evidence purporting to show that, due to changed circumstances, a qualifying relative will experience extreme hardship by relocating to the Philippines to reunite with the applicant.

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, his child, or his sibling can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful U.S. resident mother 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 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.

Previously, the AAO concluded that the applicant had established his mother would suffer extreme hardship if she remains in the United States while her son resides abroad due to his inadmissibility because of the emotional and psychological hardship she was experiencing and the potential physical effects that could result from her psychological condition. We thus do not revisit separation hardship and limit this review to the issue of hardship from relocation.

As regards establishing extreme hardship in the event a qualifying relative relocates abroad based on the denial of the applicant's waiver request, the record reflects that the applicant is a citizen and resident of the Philippines, his mother was born in Pampanga Province, and she emigrated to the United States in 1994 at the age of 45. Now 63, she lives and shares expenses with an adult daughter in California. Other family ties to the United States include two U.S. citizen parents, seven U.S. citizen siblings, and a U.S. citizen grandchild. The qualifying relative also has at least four siblings remaining in the Philippines. A self-employed day care provider since 2003 who reported income of only $2,700 for 2006, the applicant's mother documents more than five times that amount, nearly $15,000, in 2010 earnings. According to the record -- her 2007 Psychological Evaluation, her

hardship statements, remittance receipts -- she spends significant sums helping the applicant. The record shows that, from October 2008 through February 2009, she made three remittances totaling $800 to the applicant in the Philippines, while in 2011, she sent nearly $3,000.

The applicant's mother reports that the brothers and sisters in the Philippines who were unemployed and living in the town where she was born are all coming to the United States within the year based on petitions filed long ago that recently yielded available immigrant visa numbers. Documentation substantiates that they are or were in the final stage of processing for their immigrant visas, although the record does not establish their current whereabouts. Even if her siblings have not yet left the Philippines, we note that their prior unemployment coupled with their imminent departure supports the claim that they are not well-situated to help the applicant's mother find a job. Official U.S. government reporting notes that the Philippine economy weathered the recent worldwide economic downturn better than more developed countries, but the overall record suggests that the applicant's mother is unlikely to find employment in the Philippines that could approach her current income level.[1] At the same time, the record reflects that the $87,000 2006 contribution to U.S. household income by her daughter and son-in-law declined to $46,000 in 2010 from the daughter alone due to the couple's 2007 separation.[2]

Regarding the prior claim that the applicant was unemployed since 1999, the updated record reflects that he has been working part time since July 2011, but only earns just over $2.00 per day, which would not cover his approximately $100 monthly rent, indicating his dependence on the qualifying relative's remittances for living. Whereas the qualifying relative's 2010 statement claiming her son-in-law had departed the home was unsupported, there is now documentation to support her assertion that it would be financially burdensome for her daughter to help support her in the Philippines.

Regarding the qualifying relative's medical conditions – high blood pressure, insomnia, depression, and anxiety -- there is little evidence, and documentation on the record establishes that medical care is generally adequate in the Philippines. Now, however, the record reflects that her relocation would come at a time when her daughter has far fewer financial resources to draw upon to help her mother obtain whatever medical care might be available.

The documentation in the record, considered in its totality, reflects that the applicant has established that his mother would suffer hardship that is extreme were she to move back to the Philippines, where she has not lived since 1994 and no longer has strong family ties. Therefore, the AAO concludes the applicant has provided sufficient evidence to show that a qualifying relative would suffer extreme hardship if she relocated abroad to reside with the applicant.

Review of the documentation on record, when considered in its totality, reflects the applicant has established that his mother would suffer extreme hardship were the applicant unable to reside in the

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[1] Although not dispositive of the employment prospects issue, counsel's inclusion of miscellaneous Philippine job postings shows the low wages and age discrimination there.

[2] The record does not establish counsel's claim that the couple have divorced, only that the qualifying relative's daughter sought dissolution of the marriage in 2008.

United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's mother would face if the applicant were to reside in the Philippines, regardless of whether she moved there or remained here; the applicant's lack of any criminal record; and passage of more than seven years since the applicant's misrepresentation to obtain a visa. The only unfavorable factor in this matter is the misrepresentation.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violation of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the motion will be granted and the underlying application will be approved.

ORDER: The motion is granted, the prior decision of the AAO is vacated, and the waiver application is approved.