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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 23 2013 OFFICE: WASHINGTON, DC 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 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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, D.C., and 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 has resided in the United States since January 24, 1999, when she used a passport and a visa which did not belong to her to procure admission into the United States. She 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the child of lawful permanent resident parents and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident parents.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 26, 2012.

On appeal, counsel submits a brief in support and a psychological evaluation. In the brief, counsel contends the applicant did not make any utterances to immigration officials at the airport when she entered, nor did she apply for a visa at the consulate. Counsel further asserts that the applicant's admission of culpability should be considered in an evaluation of extreme hardship to her parents, and that the Field Office Director failed to consider the psychological impact the applicant's emotional state has on her parents.

The record includes, but is not limited to, the documents listed above, another psychological evaluation, statements from the applicant and her parents, evidence of birth, marriage, divorce, residence, and citizenship, and copies of U.S. Federal income tax returns. The entire record was reviewed and considered in rendering a decision on the appeal.

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:

> (1) 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.

In the present case, the record reflects that the applicant bought a passport and a visa which did not belong to her from a travel agency in the Philippines. The applicant admits she presented these documents, in the name of " " to procure admission into the United States on January 24, 1999.

Counsel states in the appeal brief that "nothing in the record of proceedings suggests that the applicant made any utterances to any U.S. inspection officer at the airport, and the applicant made no appearances at the U.S. Embassy in Manila or anywhere else to apply for the visa used to enter the United States." *Brief in support of appeal,* dated October 15, 2012.[1]

It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). Counsel is correct in that the applicant did not obtain the visa from a consulate. However, counsel's assertion that the record contains no utterances to any U.S. inspection officer at the airport is incorrect. The applicant admitted she presented the visa, in someone else's name, to immigration officials in an attempt to procure admission into the United States. Thus, even if she did not make any verbal statements, by presenting the passport and visa she indicated to immigration officials she was an individual named who had a valid visa. The AAO therefore concludes that the applicant did in fact make a material misrepresentation, of her identity and her possession of a visa, to immigration officials to procure admission.

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relatives are her lawful permanent resident parents.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

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[1] Counsel earlier asserted that, because the applicant was of low intelligence and was highly suggestible and vulnerable to influence, as stated in a psychological evaluation, her actions with respect to her admission in 1999 should be taken in context. Counsel adds that the issue of her mental state was not raised to negate the misrepresentation. Given that counsel does not contest the misrepresentation on these grounds, the AAO will not address this issue on appeal.

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. I.N.S.*, 138 F.3d

1292 (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.

The AAO notes that while admissions of culpability may be considered in an exercise of discretion, after extreme hardship has been established, there is no legal provision for its consideration in an analysis of extreme hardship to a qualifying relative.

The applicant's parents claim they will experience psychological and emotional hardship upon separation from the applicant. A psychologist reports in an evaluation that the mother facilitates communication for the applicant and her father, and that due to a cleft palate, the applicant has difficulties speaking. The psychologist states that the mother has diabetes, suffers from arthritis in her hands and knees, suffered from a crushed patella in 1987, and had laparoscopic surgery for her gall bladder 10 years ago. The psychologist adds that the mother and father, who are 73 and 75 years old, worked as live-in housekeepers until the mother retired at age 65. The psychologist further reports that they found new live-in housekeeper positions, where they earn a combined income of $3000 a month, they have no saved assets, and that they send money to the applicant's siblings in the Philippines. The psychologist concludes that the applicant's mother suffers from fear, stress, and anxiety, which have a negative impact on her interpersonal relationships.

The psychologist reports that the father indicates because he and her mother are getting older, they need the applicant present to care for them, and that she will have difficulties caring for herself in the Philippines. The father additionally states that the applicant drives her mother to doctor's appointments when he is unavailable. The psychologist opines that the father is an emotionally frail and socially avoidant individual who is experiencing significant symptoms of elevated stress and fearfulness. In conclusion, the psychologist states that the applicant's mother has depressive disorder, and the father and the applicant have adjustment disorders.

The parents claim in a letter that without the applicant present, they would become disabled people, unable to continue with their daily routines, function in their jobs, and go to their medical appointments. The parents indicate that all of her other children, who are adults, live in the Philippines, and that without the applicant's financial assistance, they would not be able to afford the airfare to visit their family in the Philippines. The parents add that the applicant makes sure they take their medications on time, and that she picks up the medications when necessary.

In the psychological evaluation, the applicant's parents indicate they have significant concerns about living in the Philippines, such as difficulty finding employment given their advanced age, obtaining medical insurance comparable to Medicare, and being able to afford health care expenses, such as paying for a replacement denture for the applicant.

The applicant does not demonstrate that her parents would experience financial difficulties without her present. Although the psychologist reports that the parents earn $3000 in combined income per month, the record does not contain any income statements corroborating this claim. The psychologist states that the mother retired when she was 65, which was in 2004, but that they both found another live-in housekeeper job afterwards and they have been working for that employer ever since. The record contains 2010 U.S. Federal income tax returns, which would, according to the psychologist, correspond to the same job they hold now. These tax returns reflect that the parents earned $108,319 in adjusted gross income in 2010. The applicant has not submitted evidence of current decreased income as reported by the psychologist, nor is there documentation, such as copies of monthly bills, to establish that the parents' expenses exceed their income. The record also does not contain documentation of the applicant's income, such as a letter from her employer or paystubs, and whether she currently alleviates any financial shortcomings. Without details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's parents will face.

Furthermore, although the parents claim they will be significantly hampered if the applicant leaves with respect to their daily tasks and their health care needs, the record contains no documentation, such as letters from medical service providers, of what their medical conditions are, and a description of any treatment or family assistance needed. 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 or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The AAO also notes the applicant has not shown that the parents have difficulties performing the tasks required of their employment as live-in housekeepers, or that the applicant assists them with those tasks.

The record reflects that the applicant and her parents were separated for 11 years, and that both parents would experience some emotional difficulties if the applicant returned to the Philippines without them, including worry about the applicant's emotional state. While the AAO acknowledges that the applicant's parents would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that their hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's parents are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that they would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without her parents.

The record contains assertions on medical, financial, and family-related hardship upon relocation to the Philippines. However, the applicant has not submitted any documentation in support of these assertions. Although the assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because

it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Given the lack of supporting evidence, the AAO can give only limited weight to the assertions of hardship upon relocation to the Philippines, the country of the parents' birth and citizenship. The record also reflects that the parents have other children who reside in the Philippines who may be able to assist with adjustment issues. There is no indication that the applicant's parents have any close relatives living in the United States or any other ties to the United States.

The AAO notes that relocation to the Philippines would entail certain difficulties. However, we do not find evidence of record to show that the parents' difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's parents are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that they would experience extreme hardship if the waiver application is denied and the applicant's parents relocate to the Philippines.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her lawful permanent resident parents 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 proceedings for a 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.