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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 2 1 2014 OFFICE: LOS ANGELES FIELD OFFICE File:

IN RE: Applicant:

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:

INSTRUCTIONS:

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, Los Angeles, California and a subsequent appeal 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 dismissing the appeal will be affirmed.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record indicates that the applicant is the spouse of a U.S. citizen and 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 reside in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director,* dated July 19, 2010.[1]

On appeal we found that the record did not establish that the applicant's spouse would suffer extreme hardship due to separation from the applicant or if she were to relocate abroad to reside with the applicant. *See Decision of the AAO,* dated February 19, 2014.

In support of the motion counsel submits a brief and a psychological evaluation of the applicant's spouse. The record contains a bank statement and a health insurance statement as well as financial documents submitted in support of the applicant's Application to Adjust Status (Form I-485); documents relating to *United States v. Tabula*, No. SACR 04-240 JVS (C.D. Cal); a copy of a selected portion of a textbook on forensic psychological assessments; counsel's earlier brief in support of the waiver; an earlier psychological evaluation of the applicant and his spouse; and statements of support from the spouse's family members. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (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.

---

[1] On appeal, we found that in the absence of an approved Form I-130, the field office director's decision denying the Form I-601 was premature, and remanded the matter for adjudication of the Form I-130. *See Decision of the AAO*, dated August 13, 2012. The Form I-130 was subsequently approved on January 14, 2014, and the original appeal of the Form I-601 denial was then adjudicated on the merits.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only qualifying relative. 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.

In our decision dismissing the applicant's appeal we determined that the record was insufficient to demonstrate that the challenges encountered by the applicant's spouse meet the extreme hardship standard. We noted that the record does not contain a hardship affidavit from the applicant's spouse, but rather assertions from a psychological evaluation and counsel's briefs. We noted that the psychological evaluation indicated that it may be assumed from test data that the spouse is experiencing an anxiety disorder and that if the applicant is deported his spouse's daily functioning will be impaired. We determined that given the options for treatment and the lack of evidence to show whether the applicant's spouse has sought treatment the assessment of the psychological impact of separation was incomplete. We acknowledged that the applicant's departure would result in significant emotional hardship to the applicant's spouse, but the implication that she would be unable to function was not supported by the record.

We noted that the record contains no direct assertions of economic hardship, only the psychological evaluation indicating that the applicant reports his spouse works while he cleans, cares for the children, and runs errands in addition to being a part-time dance instructor. We found that the record contains no documentary evidence delineating the couple's current expenses from which an accurate determination might be made concerning economic hardship to the applicant's spouse in the applicant's absence. We found that the evidence in the record was insufficient to demonstrate that she would be unable to meet her financial obligations in his absence.

We also noted that no documentary evidence had been submitted to the record addressing conditions in the Philippines. We noted that the psychological evaluation states that the applicant's spouse believes her responsibility is to raise her daughters in the United States, that she is extremely close to her mother and siblings here, and that she has the responsibility to care for her elderly aunt. We found that no documentary evidence had been submitted addressing the spouse's responsibility to care for her aunt or showing that her mother or siblings would be unable to extend such care. We found that the record contains no other assertions of relocation-related hardship to the applicant's spouse and no indication that she has any intent to relocate.

On motion counsel cites the findings of a licensed clinical psychologist's evaluation that the applicant's spouse has a dependent personality and cannot thrive without the support of a partner. Counsel asserts that if the applicant is removed the spouse's psychological problems will become paramount, and that the spouse and her children will need treatment.

The psychological evaluation submitted on motion states that without the applicant, his spouse will have to fulfill the emotional, physical, and financial needs of the children on her own and this will affect the spouse's performance at work, as she will not have the time, energy and attention necessary to perform at the level needed to fulfill her job duties. The evaluation asserts that the spouse has a dependent personality and cannot thrive without the support of a partner, and that if she then loses her job the family will lose health insurance and their quality of life. The evaluation also states that the spouse is dependent on the applicant for emotional and physical support.

A previous psychological evaluation of the applicant's spouse states that testing indicated that she suffers from a mental disorder. It states that she experiences a severe depressive and anxiety disorder, is markedly dependent, and has an intense fear of separation from those who are supportive. It states that if the applicant is deported the spouse's daily functioning will be greatly impaired. The psychologist recommended that the applicant's spouse obtain a medical evaluation, a medication consultation for mental health symptoms, and cognitive-behavioral treatment for symptoms of depression and anxiety. The psychologist writes that despite the spouse's pessimistic outlook she can overcome past disappointments and it indicates that despite the spouse's dependency in interpersonal relationships she managed to graduate with a Bachelor of Science degree and intends to pursue a graduate degree. The evaluation states that despite her anxiety, depression and fear of separation from those on whom she depends, the applicant's spouse has maintained employment and receives strong performance evaluations, demonstrating that she functions at a high level. The evaluation further notes that the spouse purchased a home and supports herself, the applicant, her children, and an aunt.

Although the record shows that the applicant's spouse confronts some psychological difficulties and suffers some emotional hardships, the evidence on the record does not establish the severity of those emotional hardships or their effects on her daily life or indicate that she would be unable to function without the applicant. The reports provided do not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible.

On motion deficiencies noted in our previous decision regarding financial hardship have not been addressed by counsel. The most recent psychological evaluation states that without the applicant the children will require more attention, which will affect the spouse's job performance and possibly her employment, leading to financial hardship. The previous evaluation stated that the applicant does various chores while the spouse works. However, no documentation has been submitted establishing the spouse's current income and expenses or her overall financial situation to establish that without the applicant's physical presence in the United States, she will be unable to support herself and their children and will experience financial hardship.

We recognize that the applicant's spouse will endure some hardship as a result of long-term 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.

In dismissing the appeal we noted that the initial psychological evaluation states that the applicant's spouse believes her responsibility is to raise her daughters in the United States, that she is extremely close to her mother and siblings here, and that she has the responsibility to care for her elderly aunt. We also noted that no documentary evidence had been submitted to the record to support the spouse's care for her aunt or addressing conditions in the Philippines. On motion these deficiencies have not been addressed by counsel. Therefore we find that the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to the Philippines to reside with the applicant.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his U.S. citizen spouse 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 application for waiver of grounds of inadmissibility, 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.

ORDER: The motion to reopen is granted and the prior AAO decision dismissing the appeal is affirmed.