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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

FILE: [REDACTED]

Office: NEW YORK CITY

Date:

AUG 02 2010

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:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York City. The decision 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation of a material fact. The record indicates that the applicant is married to a Lawful Permanent Resident of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with his wife.

The district director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 28, 2006.

On appeal, counsel states that the decision of the district director is “arbitrary, capricious and an abuse of administrative discretion as well as contrary to the law and facts of this case.” *See Form I-290B*, filed September 25, 2006. Counsel also asserts that the misrepresentation by the applicant was not material and therefore no fraud was committed. *See Counsel’s brief in Support of Motion to Reopen/Reconsider*, dated July 15, 2009.

The record includes, but is not limited to, counsel’s brief in support of appeal, an affidavit from the applicant’s wife dated July 6, 2006, a letter from the applicant’s employer dated July 13, 2006, letters from [REDACTED], the applicant’s wife’s physicians, copies of the couple’s bank statements, copies of the applicant and his wife’s W-2 Wage and Tax Statements, a copy of an apartment lease, copies of the applicant’s and his wife’s U.S. Individual Income Tax Returns (Form 1040) for 2002 through 2005, copies of insurance and line of credit bills, and a copy of U.S. Department of State, Bureau of Consular Affairs, Travel Warning on the Philippines, dated June 19, 2006. 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, 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.

Section 212(i) of the Act provides that:

- (1) 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

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 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....

In the present case, the record indicates that on February 14, 1993, the applicant procured entry into the United States by presenting a fraudulent passport and non-immigrant visa belonging to another individual. On April 21, 2005, the applicant filed a derivative Application to Register Permanent Residence or Adjust Status (Form I-485) as a dependent of his wife, who was granted legal permanent resident status as the beneficiary of an approved I-140, Immigrant Petition for Alien Worker, and a Form I-601. On August 28, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

On appeal, counsel asserts that although the applicant misrepresented his identity by using a passport belonging to another person to gain entry into the United States, the misrepresentation is not material and no fraud was committed. In support of his assertion, counsel cited a prior decision by the AAO in which the AAO found that misrepresentation by the applicant was not material. In that case, the applicant began using a false name upon his undocumented entry into the United States and continued to use the name throughout his subsequent marriage and on the Form I-130 petition by his wife; the applicant provided his true identity when he applied for adjustment of status based on the approved petition. In its decision, the AAO found that using a false name did not cut off a line of inquiry that would have led to a finding of ineligibility and that the decision to approve the I-130

was based on whether there was a bone fide marriage, not whether the applicant was using a false name. Furthermore, the AAO noted that the I-130 correctly listed the applicant's immigration status as having entered without inspection and that he did not appear to be using the false name to hide his immigration status.

In the present case, however, the applicant misrepresented his identity to immigration officials in order to procure the benefit of entry to the United States. In such an instance, the inspecting officer must make material inquiries such as whether the applicant possesses valid entry documents that were lawfully issued to him, and whether any United States government agencies possess information that has a bearing on the applicant's admissibility, such as records of criminal activity or prior immigration violations. Therefore, when the applicant misrepresented his identity, he cut off these material inquiries. Specifically, the inspecting officer was unable to determine whether the applicant was the true owner of the passport and visa, whether he possessed valid entry documents of his own, or whether the United States possessed information that has a bearing on the applicant's eligibility for entry. Had his true identity been provided, the officials would have determined that he did not possess proper documentation and he would have been denied admission.

Thus, counsel's assertion that the applicant's misrepresentation was not material, is without merit. The applicant made a willful misrepresentation in order to gain admission to the United States. Had he revealed his true identity to the inspecting officer, he would have been refused admission due to his lack of valid entry documents. Therefore, the applicant misrepresented his identity to gain a benefit under the Act for which he was not eligible, and such misrepresentation was material.

Based on the applicant's use of a fraudulent passport and non-immigrant visa belonging to another person to enter the United States, the AAO finds that the applicant willfully misrepresented his identity, a material fact, in order to obtain a benefit under the Act and is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

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 to his citizen or lawfully resident spouse or parent. 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible..." and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is

diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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). Only “in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The AAO also notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse would experience extreme hardship as a result of the applicant’s inadmissibility.

The applicant’s wife states that she would suffer hardship if she is forced to move to the Philippines to live with the applicant. The applicant’s wife states that she will be unable to obtain employment in the Philippines and would be forced to relinquish her permanent residence in the United States. [REDACTED] dated July 6, 2006. Additionally, the applicant’s wife states that she would suffer hardship because the applicant will not be able to obtain employment in the Philippines

due to the severe economic condition in the country, which will result in financial hardship to her. *Id.*

While the AAO acknowledges the claims made by the applicant's wife, it does not find the record to support them. The record fails to contain documentary evidence such as country condition reports on the Philippines that demonstrate that the applicant's wife would be unable to obtain employment upon relocation to the Philippines. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). The AAO notes that the applicant's wife is a native of the Philippines who has lived most of her life in the Philippines. She has not addressed any family ties she may have in the Philippines that would help her adjust to life there upon return. Also, the applicant's wife does not indicate any family ties in the United States that may be impacted by her relocation to the Philippines. Additionally, the AAO notes that other than the statement from the applicant's wife, the record does not include any evidence of financial, medical, or other types of hardships that the applicant's wife would experience if she relocated to the Philippines with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's wife would suffer extreme hardship upon relocation to the Philippines.

The record also fails to establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment. The AAO notes that, as a United States citizen, the applicant's wife is not required to reside outside the United States as a result of denial of the applicant's waiver request. The applicant's wife claims that she would suffer extreme emotional and physical hardship if the applicant is returned to the Philippines because she loves the applicant and they are planning to have children and start a family in the United States. *Affidavit of* [REDACTED] [REDACTED] dated July 6, 2006. The record includes a handwritten statement from [REDACTED] [REDACTED] dated October 23, 2006, stating that the applicant's wife is under her care for hypertension, high cholesterol, and anemia and that she is currently complaining of chronic dizziness, and a brief letter from [REDACTED] [REDACTED] dated July 16, 2009, stating that the applicant's wife has been under her care, that she suffers from fibroids, severe iron deficiency anemia, hypertension, elevated cholesterol and fatty liver. [REDACTED] [REDACTED] also states that the applicant's wife was scheduled to have surgery to remove her fibroids in September 2009. No other medical documentation is in the record.

Regarding financial hardship, the applicant's wife states that the applicant would be unable to obtain employment in the Philippines due to the "severe economic condition in the Philippines," and so she would be forced to support her husband in the Philippines as well as support herself in the United States, which will cause her financial hardship. *Id.*

Although the applicant's wife claims that separation from the applicant would cause emotional, physical and financial challenges to her, the evidence in this record is not sufficient to demonstrate that the challenges encountered by the applicant's wife, considered cumulatively, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant's wife's letter, the applicant did not provide credible medical records, detailed testimony, or other

evidence to show that any emotional or psychological hardships his wife faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. The record includes very brief letters from [REDACTED], providing a list of the applicant's wife's medical ailments. The brief letters from [REDACTED] do not provide details about the severity of the applicant's wife's medical condition, a description of any treatment being received, or prognosis for recovery. Without more detailed information, the AAO is not in the position to reach conclusions about the severity of a medical condition or any treatment or family assistance needed. The record does not contain a detailed record of the applicant's family's expenses and the financial documentation submitted by the applicant is insufficient to establish that family separation would cause extreme hardship to the applicant's wife. Additionally, there is no evidence in the record to show that the applicant would be unable to contribute to his family's financial well-being from his location outside the United States.

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. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his 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 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.