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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

765

[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA Date: DEC 15 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:

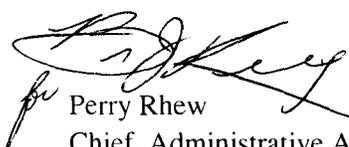
[Redacted]

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 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 \$630. 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 Field Office Director, Los Angeles, California, and 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 attempting to adjust status to a Lawful Permanent Resident through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is currently married to a United States citizen and 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, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband and Lawful Permanent Resident child.

The Field Office Director (FOD) found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 20, 2008.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because the Field Office Director had determined that the applicant did not commit marriage fraud, and the decision lacked the necessary specificity to constitute a valid finding of fraud. In the alternative, counsel asserts that the applicant has provided sufficient credible evidence to establish extreme hardship to her spouse if the waiver application is denied. *Form I-290B*, filed June 20, 2008, and the accompanying brief.

The record includes, but is not limited to, an affidavit and a statement by the applicant's husband, an affidavit by the applicant, letters from two medical doctors regarding the applicant's husband, and copies of U.S. Individual Income Tax Returns (Form 1040) for the applicant and her husband for 2006 and 2007. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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 on June 20, 2002, the applicant was admitted into the United States on a B-2 visa, with authorization to remain in the country until December 19, 2002. The record reflects that on January 21, 2003, a Form I-130 petition was filed on the applicant's behalf by [REDACTED] a United States citizen, and on the same date, the applicant submitted an Application to Register Permanent Resident of Adjust Status (Form I-485). In order to establish the requisite relationship, the petitioner submitted a marriage certificate which indicated that he and the applicant were married in Los Angeles, California, on December 2, 2002. It was later determined that no record of the marriage existed.¹ On December 29, 2004, the applicant married her current husband, [REDACTED] a United States citizen in Los Angeles, California. On January 31, 2005, [REDACTED] filed a Form I-130 on the applicant's behalf and on the same date, the applicant filed a Form I-485 based on the Form I-130 petition. On June 6, 2007, the Field Office Director issued two decisions denying the Form I-130 petition and the Form I-485 application filed in 2003, and the Form I-130 petition filed by [REDACTED] on the applicant's behalf and the Form I-485, both filed in 2005. In the Notice of Decision (NOD), the FOD determined that the applicant entered into a fraudulent marriage in 2003 for the purpose of circumventing immigration laws and to obtain immigration benefit. The FOD found her inadmissible under section 204(c) of the Act.

Counsel timely appealed that decision. The Field Office Director accepted the appeal as a Motion to Reopen and Reconsider, and on October 23, 2007, the Field Office Director reversed his June 6, 2007 decision. In reversing the decision, the Field Office Director found that the Service was in error in denying the application for adjustment of status based on marriage fraud because the marriage in 2002 was fabricated and non-existent, and no marriage fraud was committed by the applicant. The Field Office Director then approved the Form I-130 filed in 2005 by [REDACTED] on the applicant's behalf. The Field Office Director however determined that there was the presence of fraud in the Form I-485 the applicant filed on June 21, 2003, and found her inadmissible based on that fraudulent application.

On January 17, 2008, the applicant filed a Form I-601 waiver. On May 20, 2008, the Field Office Director denied the Form I-601. In denying the waiver application, the FOD determined that the applicant is inadmissible to the United States because she had previously filed a fraudulent application to adjust status on January 21, 2003 and had failed to demonstrate extreme hardship on a qualifying relative.

On appeal, counsel argues that the applicant should not be found inadmissible based on fraud because the Field Office Director had determined that the applicant did not commit marriage fraud, that the finding of fraud was based on insufficient evidence, and that the Field Office Director did not provide any specific evidence of fraud but merely stated that "there was fraud" in the I-485 filed by the applicant in 2003.

The AAO agrees with counsel that the Field Office Director had determined that the applicant did not commit any marriage fraud in connection with the Form I-130 petition filed on her behalf in 2003, and

¹ See Letter from [REDACTED] dated April 30, 2007.

reversed his finding of marriage fraud. However, the record contains a copy of a Form I-485 and Form G-325A dated January 5, 2003, which the applicant completed and signed under penalty of perjury in which she stated that she was married to [REDACTED] a United States citizen on December 2, 2002. The applicant submitted the application in an attempt to adjust status, an immigration benefit under the Act. In rebuttal, counsel claims that the applicant was unaware of the content of the Form I-485 filed in 2003, that the immigration provider whom she had retained to obtain a work authorization and an H-1B visa for her made the false statements, and that she should not be penalized for the false statements. Counsel submitted no evidence in support of his assertions other than the applicant's own self-serving statement. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the false statements made by the applicant on a previous Form I-485 application, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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. The applicant's wife 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this

separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the record reflects that the applicant’s spouse, [REDACTED] is a 65 year-old citizen of the United States. The applicant and her husband were married on December 29, 2004, in Los Angeles, California. The applicant and her husband do not have any children together. The record reflects that the applicant has a daughter from a previous marriage who lives with the applicant and her husband.

The applicant’s husband states that he would suffer hardship if he is forced to move to the Philippines to live with the applicant for the following reasons: h was born in the United States and has resided in the United States all his life; he has no family ties in the Philippines; he does not speak, read or understand Tagalog, the Philippine language; he has serious medical problems and is under the care of his doctors in the United States and fears that he would not be able to receive the same level of care in the Philippines; he anticipates receiving Medicare for his medical treatment once he reaches sixty-five years of age and fears that Medicare will not pay for his medical treatments and medications in the Philippines. *Affidavit of* [REDACTED] dated January 11, 2008. Counsel asserts that should the applicant’s husband (who is in his 60’s and close to retirement) relocates to the Philippines in order to be with his wife, he could not rely on Medicare or Social Security to cover any medical expenses, and if he were required to get treatment overseas for his medical condition, he could face not merely financial hardship, but “financial devastation and poverty.” *Counsel’s Brief in Support of Appeal*. The record contains letters from [REDACTED]

Neurological Surgeon and Urologist, both at Cedars-Sinai Medical Center, Los Angeles, California.

While the AAO acknowledges the claims made by the applicant's husband, it does not find the evidence in the record to support them. The AAO acknowledges that the applicant does not have family ties in the Philippines and may not speak the language used in the Philippines, however, the record does not contain documentary evidence such as country condition reports on the Philippines that demonstrate that the applicant's husband would be unable to obtain medical treatment in the Philippines. There is no evidence in the record to demonstrate that the applicant would not be able to pay for his medical treatment and medication in the Philippines and that he would be forced into poverty there. 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)). Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship upon relocation to the Philippines.

The record also fails to establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment. The AAO notes that, as a United States citizen, the applicant's husband is not required to reside outside the United States as a result of denial of the applicant's waiver request. The applicant's husband claims that if the applicant is forced to leave the United States, he would face extraordinary difficulties in carrying out day-to-day tasks and activities. *Affidavit and Statement from* dated January 11, 2008. The applicant's husband states that he has serious medical issues, that he has cervical and lumbar disk disease, that he has had two major spinal surgeries, that he has chronic pain in his neck and back, numbness in his legs and decrease mobility in his legs. *Id.* The applicant's husband states that he has had to undergo pain management in the form of pain medications, epidural blocks and physical therapy. *Id.* The applicant's husband states that as a result of his medical condition, he has difficulties performing some basic functions such as walking and driving and has had to rely on the applicant to get around. Additionally, the applicant's husband states that it is the applicant's love and companionship keeps him "in touch with the world," and it is difficult for him to put into words the loss and personal devastation he would experience if the applicant were forced to leave the United States. *Id.*

Counsel claims that the applicant's husband relies on the applicant to achieve basic mobility because of his medical issues and physical problems and that the applicant's husband would suffer an overwhelming loss should he be separated from the applicant. *See Counsel's Brief in Support of Appeal*, dated January 19, 2008. The record includes a letter from dated December 3, 2007, stating that the applicant's husband has been his patient for the last five years, that he has a degenerative spinal condition for which he has undergone two surgeries. states that as a result of the second surgery, the applicant's husband has decreased mobility of both his legs and suffers chronic pain in the neck and legs which is being controlled through medications, pain management, epidural blocks, and physical therapy. The record also includes a letter from dated November 1, 2007, stating that he has been treating the applicant for the past ten years for a history of bladder cancer, that the applicant's husband had an operation in 1997 to remove a large malignant tumor in his bladder and that he is continuously being monitored to ensure that he develops no recurrences. The record also

contains copies of the applicant and her husband's U.S. Individual Income Tax Returns (Form 1040) for 2006 and 2007.

While the AAO acknowledges that separation may cause some hardship for the applicant's husband, it finds the evidence in the record insufficient to establish that the challenges he faces meet the extreme hardship standard. The letters from the doctors [REDACTED] confirm that the applicant's husband has some medical issues, but they do not establish that the applicant's husband requires any assistance from the applicant to get around. The applicant has submitted no medical documentation that demonstrates that the applicant's husband requires a caregiver, that the applicant is the caregiver, and that removal of the applicant from the United States would result in extreme hardship to her husband. While the record contains information about the family's income, there is no documentation or evidence of the family's expenses. While the applicant's husband claims emotional hardship as a result of family separation, the record does not contain detailed testimony, medical records or other evidence to demonstrate that any emotional or psychological hardship the applicant's husband faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility.

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.