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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

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[REDACTED]

FILE:

[REDACTED]

Office: JACKSONVILLE, FL

Date:

DEC 22 2010

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Jacksonville, Florida. The matter 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. The applicant was found 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 of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with her husband.

The field office director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the Field Office Director* dated May 13, 2009.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred by stating that the applicant had used a counterfeit temporary resident card in addition to her use of a fraudulent passport to enter the United States and in finding that she had been convicted of a felony offense. *Brief in Support of Appeal* at 3. Counsel further claims that USCIS failed to adequately consider hardship to the applicant's husband if he had to care for his aging parents on his own and minimized the role the applicant and her husband play in their care. *Brief* at 3. Counsel further asserts that the applicant's husband would suffer emotional hardship due to separation from the applicant and the effects of the applicant's departure on his parents. *Brief* at 5. Counsel additionally states that the applicant's husband has lived in the United States for most of his adult life and would experience extreme hardship if he relocated to the Philippines due to separation from his family in the United States and having to adjust to poor economic conditions and inadequate medical care there. *Brief* at 5. Counsel additionally asserts that the applicant's wife should be allowed to adjust her status under section 245(i) of the Act despite the fact that she entered the United States with a fraudulent documents rather than entering without inspection. *Brief* at 6-7. In support of the appeal counsel submitted statements from the applicant's husband and his parents, medical records for the applicant's husband and for his parents, letters from friends and relatives, information on the applicant's family income and expenses, a letter from the applicant's church, information on conditions in the Philippines, and a copy of the applicant's father's death certificate. 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:

- (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.

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 husband 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).

Although 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 the 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 the present case, the record reflects that the applicant is a forty-two year-old native and citizen of the Philippines who has resided in the United States since November 1992, when she was admitted after presenting a fraudulent passport and nonimmigrant visa. [REDACTED]

They reside [REDACTED] with the applicant’s mother-in-law and father-in-law.

Counsel asserts that the applicant’s husband would suffer extreme hardship if he relocated to the Philippines because he would be separated from his family members in the United States and because he has not lived there for over fifteen years. Counsel additionally asserts that he would suffer hardship due to economic and social conditions and difficulty adjusting to these conditions and finding adequate medical care. In support of these assertions counsel submitted letters from his

family members in the United States, including his siblings and parents, all of whom live in close proximity to the applicant and her husband. Letters from family friends and their church further indicate that the applicant and her husband are active at their church and have many close friends in their community. The record indicates that the applicant's husband has resided in the United States since 1994, when he was admitted as a Lawful Permanent Resident. Additional documentation on the record indicates that economic conditions are poor in the Philippines, unemployment and underemployment are high, and kidnapping for ransom as well as terrorist attacks are threats in certain parts of the country. The AAO further notes that the U.S. Department of State has issued a warning against travel to certain parts of the Philippines and further warns that "U.S. Citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those due to terrorism." See U.S. Department of State, Bureau of Consular Affairs, *Philippines – Country Specific Information*, updated February 6, 2009.

The AAO finds that the evidence on the record, when considered in the aggregate, establishes that the emotional and physical hardships that would result from relocating to the Philippines and having to adjust to economic and social conditions there after residing in the United States for over fifteen years and severing his close family and community ties in the United States would rise to the level of extreme hardship for the applicant's husband. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). The hardship caused by severing his ties to the United States and having to readjust to conditions and seek employment in the Philippines, combined with the threat of terrorist groups that may target U.S. Citizens, would amount to extreme hardship for the applicant's husband if he were to relocate to the Philippines.

Counsel asserts that the applicant's husband would suffer emotional hardship if he remained in the United States without the applicant, including difficulty trying to care for his aging parents on his own. The record contains several letter stating that the applicant and her husband have a close and loving relationship and the applicant is primarily responsible for caring for his parents and taking them to doctor's appointments. The applicant's husband states that the applicant has been a wonderful and caring wife and his feelings for her grow stronger every day they are together. *Letter from* [REDACTED]. He further states,

When it comes to my parents' health, we all depend on my wife to take care of them. . . . None of us, their children, can do what she's done for them. Flor knows about their medical problems better than we do. . . . They will miss her so much and be lost and hurt if she had to leave the country and go back home

Letters from friends and family members state that the applicant and her husband love each other very much and take good care of each other and would be depressed and lonely if they were separated. The applicant additionally states that she and her husband are seeing a fertility doctor to help them have a child, and have tried to start a family but have been unable. No evidence was submitted to support this assertion. 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)).

The applicant's husband states that he and his siblings would be unable to care for their parents in the applicant's absence because they have to work and take care of their families and his sister lives too far away. Letters from the applicant's husband's siblings, including his sister who lives in [REDACTED] and a brother who lives in the same town as the applicant, state that the applicant's husband would be unable to care for their parents on his own, but provide no further explanation of why they would be unable to provide the assistance the applicant currently provides. Further, although the emotional effects of significant conditions of health of a close family member on a qualifying relative are relevant factors in establishing extreme hardship, the evidence on the record does not establish that either of the applicant's parents-in-law suffers from such a medical condition such that the applicant's husband would suffer from emotional hardship if the applicant departed. The record contains some medical records for the applicant's parents, including laboratory results, but no further detail on their medical condition, such as a letter from their physician explaining the nature and severity of any condition and the treatment or assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions about the nature or severity of a medical condition.

Counsel asserts that the applicant's husband would suffer emotional hardship due to separation from the applicant and the effects of the separation on his parents, who rely on the applicant for daily assistance. The evidence on the record is insufficient to establish, however, that any emotional difficulties he would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's exclusion or removal. Although the depth of his distress caused by the prospect of separation from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission and he remains in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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). The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.