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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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FILE: [Redacted] Office: MANILA, PHILIPPINES Date: DEC 29 2010

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B) and 212(i) of the Act, 8 U.S.C. § 1182(i) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

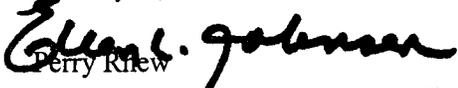


INSTRUCTIONS:

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 \$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 Rife  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Manila, Philippines. The matter 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

In a decision dated June 10, 2008, the field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 10, 2008.

On appeal, the applicant's attorney submitted a statement in the Notice of Appeal (Form I-290B), along with a supplemental attachment, which asserted several hardships faced by the qualifying spouse. In the statement, the applicant's attorney asserted that the applicant's spouse is encountering emotional, medical and financial hardships as a result of her separation from the applicant. In addition, the applicant's attorney contends that the applicant's spouse would suffer extreme hardship upon relocating to the Philippines.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), Form I-290B, a supplemental attachment that accompanied the Form I-290B, a brief in support of the waiver, an Application for Permission to Reapply for Admission Into the United States After Deportation (Form I-212), an affidavit from the qualifying relative, a chart indicating the qualifying spouse's family ties in the United States, the birth certificate of the applicant's daughter, family pictures, a letter from the applicant's child and her school records, medical documents regarding the qualifying spouse, financial documentation, documentation regarding the qualifying spouse's employment, proof of the qualifying spouse's health coverage and country condition materials.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present. -

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant entered the United States in 1984 with a B-2 visa, which authorized his stay for six months. The applicant was granted conditional residence on September 11, 1987 through his marriage to his second wife, [REDACTED] which union resulted in a divorce. Thereafter, he was placed in removal proceedings and granted voluntary departure until October 18, 1994. The applicant failed to comply with the grant of voluntary departure and remained in the United States until September 11, 2000. The applicant thus accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions, until September 11, 2000, a period in excess of one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within ten years of the date of his departure. As the applicant's departure occurred on September 11, 2000, it has now been more than ten years since the departure that made the inadmissibility issue arise. A clear reading of the law reveals that the applicant is no longer inadmissible under 212(a)(9)(B).

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Although the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I), the AAO finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a benefit under the Act through fraud or misrepresentation.

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:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that the applicant gave false certification and testimony regarding when he had resided with his second wife, [REDACTED] in order to remove his conditional residency. The applicant conceded that he provided false statements in a sworn statement on April 5, 1991, wherein he stated that "the sworn statement that I made on that day [March 6, 1990] is not true... I never lived

with [REDACTED] According to a letter from the District Director, Honolulu, Hawaii, dated April 9, 1991 to the applicant, the director indicated that the applicant confessed to providing false testimony "only after learning from [his] wife that she planned to testify as a Service witness in [his] deportation proceedings." As such, the AAO finds the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having attempted to procure a benefit under the Act through fraud or misrepresentation

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 child 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.

The applicant’s qualifying relative in this case is his spouse, who is a United States citizen.

A waiver of the bar to admission under section 212(i) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative of the applicant. The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that she relocates to the Philippines and in the event that she remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant’s waiver request. The AAO will consider the relevant factors in adjudication of this case.

The evidence submitted relating to the potential hardships facing the applicant’s spouse was Form I-601, Form I-290B, a supplemental attachment that accompanied the Form I-290B, a brief in support of the waiver, Form I-212, an affidavit from the qualifying relative, a chart indicating the qualifying spouse’s family ties in the United States, the birth certificate of the applicant’s daughter, family pictures, a letter from the applicant’s child and her school records, medical documents regarding the qualifying spouse, financial documentation, documentation regarding the qualifying spouse’s employment, proof of the qualifying spouse’s health coverage and country condition materials.

As previously stated, the applicant’s attorney asserted on appeal that the qualifying relative was encountering emotional, health-related and financial hardships as a result of her separation from the applicant. In addition, the applicant’s attorney indicates that the applicant’s wife has close family ties to the United States and would also suffer extreme hardship upon relocating to the Philippines due to country conditions.

The AAO finds that the applicant's spouse would not suffer extreme hardship as a consequence of being separated from the applicant if she stayed in the United States. Although the qualifying spouse's separation from the applicant may be causing her emotional, medical and financial hardships, there is very little evidence in the record to demonstrate that the hardships she may be encountering rise to the level of extreme hardship. With regard to the applicant's spouse's claim regarding financial hardship, the record contains documentation regarding the qualifying spouse's income and expenses. In her affidavit, the qualifying spouse also indicated that she has been forced to live with her mother due to her financial situation. While the applicant's wife may be struggling financially, there was no evidence to demonstrate that her financial situation would be improved if the applicant were to live in the United States. The applicant lived in the United States for almost twenty years, yet there was no evidence of his prior financial contributions when he lived here. As such, the record does not indicate that the applicant's spouse relied on any financial contributions by the applicant. Moreover, despite the financial struggles alleged, the applicant's attorney indicates in the original brief, submitted with the Form I-601, that the applicant's wife has been able to take a "few trips" to the Philippines. Therefore, the applicant has not sufficiently demonstrated that she would suffer a financial hardship as a result of the applicant's inadmissibility.

The applicant's attorney also asserts that the qualifying spouse has been suffering from anemia, vertigo, ear and skin infections and ulcers, and that many of these issues have been a result of the stress she has been experiencing due to the applicant's absence. To support such contentions, the record contains handwritten notes by doctors, printouts from various office visits<sup>1</sup> and internet information regarding the medications that the qualifying spouse is taking. This evidence is insufficient to establish the severity of the claimed medical conditions. The record contains copies of medical records, including hand-written progress notes, which contain medical terminology and abbreviations that are not easily understood. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's wife. 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 applicant's wife claims that she is emotionally suffering due to her separation from the applicant and her having to raise her daughter as a single mother. However, the record reflects that the qualifying spouse married the applicant in 2003, in the Philippines, after the applicant had already been removed and, that she was dating him while he was already in removal proceedings. While the AAO empathizes with the qualifying spouse's situation of raising a child as a single mother, the qualifying relative was likely aware that her husband was in removal proceedings when she had her daughter and knew that the applicant had been deported at the time she wed, and therefore her expectations were that the applicant may not be able to live with her in the United States. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567. Therefore, the resulting hardship of her having to raise a child alone is not unusual or beyond what she expected, and we do not find that the applicant has

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<sup>1</sup> According to the applicant's attorney, the qualifying spouse has visited the doctor "approximately seven times" which she claims is "well-above average."

demonstrated that his qualifying spouse would suffer an extreme hardship in the event she remains in the United States.

However, the applicant has sufficiently demonstrated that his qualifying relative would suffer an extreme hardship in the event that she relocates to the Philippines. The record reflects that it would be a hardship on the applicant's wife to relocate to the Philippines because all her immediate family is in the United States. Moreover, country condition information was submitted which confirmed such assertions relating to the qualifying spouse's potential safety concerns and financial difficulties if she were to relocate to the Philippines. The applicant would also lose her employment and the health benefits that she receives through such employment, if she left the United States. As such, the AAO finds that the applicant has met his burden in showing that his qualifying spouse would suffer extreme hardship, should she choose to relocate to the Philippines.

In sum, although the record indicates that the applicant's spouse may be encountering hardships based on separation, it does not support a finding that the difficulties, considered in the aggregate, would 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 spouse 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility 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.

The AAO notes that the field office director denied the applicant's Form I-212, Application for Permission to Reapply for Admission (Form I-212) in the same decision. As it has now been more than 10 years since his removal his is no longer inadmissible under section 212(a)(9)(A) of the Act and therefore, no longer needs permission to reapply for admission. However, as he is inadmissible under section 212(a)(6)(C) of the Act and his wavier under section 212(i) has been denied, he remains inadmissible to the United States.

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. *See* 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.