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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: LOS ANGELES, CA

Date **NOV 09 2010**

IN RE:

[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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

f. / Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and 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 under 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 into the United States by fraud or willful misrepresentation on December 1, 1984 and for having attempted, through fraud, to procure immigration benefits under the Act. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

An overseas investigation conducted in 1994 and U.S. Citizenship and Immigration Services' records reveal that the applicant has perpetuated a series of misrepresentations spanning two decades and including numerous members of her family. Records indicate that on December 1, 1984 the applicant entered the United States with her son as a B2 visitor having failed to state on her visa application that she was married to a lawful permanent resident. The 1994 investigation reveals that the applicant was married to [REDACTED] in the Philippines on July 18, 1980, but this marriage was concealed so that Mr. [REDACTED] could immigrate to the United States as an unmarried child of lawful permanent residents. Records indicate that Mr. [REDACTED] immigrated to the United States in 1982 or 1983 and is now a U.S. citizen. The record indicates that the applicant entered the United States with her son to be reunited with Mr. [REDACTED] who was at that time a lawful permanent resident.

The 1994 investigation includes an admission from the applicant's mother in the Philippines stating that in an effort to obtain a visa and then an approved Alien Relative Petition (Form I-130), a fraudulent marriage certificate between the applicant and a fictitious "[REDACTED]" was created as well as a death certificate for "[REDACTED]" establishing that the applicant was widowed on September 9, 1984. On the Form I-130 submitted by her true husband, Mr. [REDACTED], the applicant's former spouse is listed as "[REDACTED]". The Form I-130 also states that the applicant and Mr. [REDACTED] were married on May 1, 1985 in Los Angeles, California, when in truth they had been married since July 18, 1980. This Form I-130 was filed on November 2, 1992, but was withdrawn. On August 4, 1995 and November 22, 1999 employers of the applicant filed Petitions for an Alien Worker (Form I-140) on her behalf and both were approved. On April 7, 1997 and October 15, 2002 the applicant's filed Applications to Register Permanent Residence or Adjust Status (Form I-485) and both were denied. The AAO notes that supporting documentation submitted with the applicant's Form I-485 filed on October 15, 2002 shows the applicant claiming her former spouse as the fictitious [REDACTED] and that her marriage to Mr. [REDACTED] took place in 1985. The AAO also notes that the supporting documentation submitted with the applicant's Form I-485 filed on April 7, 1997 reveals the true marriage date of the applicant and Mr. [REDACTED] and the applicant does not claim any former spouse.

The AAO notes that the 1994 investigation and a sworn statement from the applicant dated October 29, 1992 also reveal that the applicant arranged for her daughter to enter the United States under an assumed name as the daughter of her spouse's uncle. She states that she accomplished this misrepresentation by changing her daughter's birth certificate, obtaining a passport, and then applying for a visa. In her statement she states that these misrepresentations were necessary as her daughter had been refused entry into the United States on two occasions.

The applicant's current Application for Waiver of Grounds of Inadmissibility (Form I-601) was filed on January 4, 2008 in conjunction with a third Form I-485 filed on April 19, 2004 and based on an approved Form I-140.

In a decision dated March 7, 2008, the district director found that the applicant failed to demonstrate that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility to the United States. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B) dated April 3, 2008, counsel states that the applicant has been in the United States since 1985 and that she and her spouse have raised their three children in the United States. She states that the applicant and her spouse are both registered nurses and lead comfortable lives in the United States. She states that the applicant's spouse is concerned about relocating to the Philippines given the current political and economic situation. She states that if the applicant relocated her and her daughter would be in the Philippines with no immediate relatives and that the applicant would suffer physically and mentally.

The AAO finds, as detailed above, that the applicant procured admission into the United States by fraud on December 1, 1984 and has since attempted to procure immigration benefits under the Act through fraud.

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, in pertinent part:

- (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 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.

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 and/or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 record of hardship includes: a statement from the applicant’s spouse, a statement from the applicant’s son, and articles regarding unemployment in the Philippines. The record also includes numerous financial and employment documents. The applicant’s spouse claims that he will suffer psychological, emotional, and financial hardship as a result of the applicant’s inadmissibility. He states that he will also be concerned for the safety of his wife and daughter in the Philippines because of the political turmoil and rising crime rate. In addition, the articles submitted indicate that the Philippines has a high unemployment rate, but do not indicate that two people who are trained as registered nurses, like the applicant and her spouse, would not be able to find employment upon relocation.

The AAO finds that the applicant’s statements are not supported by documentation in the record and do not indicate that the hardship he faces rises to the level of extreme hardship. The AAO also finds that the documentation submitted in regards to relocation does not establish that a

person of the applicant's spouse's work experience and background would experience extreme hardship upon relocating to the Philippines.

Furthermore, the AAO finds that even had extreme hardship to the applicant's spouse been established the applicant would not warrant a waiver as a matter of discretion. As stated above, the record establishes that the applicant has perpetuated a series of misrepresentations spanning two decades and including numerous members of her family. The applicant has submitted fraudulent documents and statements in an effort to obtain immigration benefits for herself and her family, including her spouse and daughter. The applicant's only qualifying relative, her U.S. citizen spouse, obtained his immigrant visa and lawful permanent residency through fraudulently concealing his marriage to the applicant. The applicant then continued to perpetuate and conceal this misrepresentation for two decades through fraudulent acts of her own so that her spouse could obtain U.S. citizenship and she could obtain lawful permanent residence. The applicant also used fraudulent documentation and statements to obtain a visa for her daughter to enter the United States. Thus, the AAO finds that the favorable factors in the applicant's case are so greatly outweighed by the unfavorable factors such that a favorable exercise of discretion would not be warranted.

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.