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



U.S. Citizenship
and Immigration
Services

H5



FILE: [REDACTED] Office: SAN JOSE Date: OCT 01 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, 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 seeking to procure benefits provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen wife.

The field office director concluded 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 January 4, 2008.

On appeal, counsel for the applicant contends that the applicant did not commit fraud or misrepresentation. *Brief from Counsel*, undated. Counsel further asserts that the applicant and his U.S. citizen daughter will experience hardship if the present waiver application is denied. *Id.* at 1-2.

The record contains a brief from counsel in support of the appeal; a copy of the applicant's birth certificate; tax, banking, and employment records for the applicant and his wife; statements from the applicant, the applicant's wife, and the applicant's daughter; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage record, and; copies of the applicant's Form I-94, Departure Record, and passport. The entire record was reviewed and considered in rendering this decision.

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

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.

The record reflects that on March 25, 1992 the applicant was admitted to the United States as a nonimmigrant visitor, with authorization to remain for a six month period. On December 3, 1993, he filed a Form I-485 application to adjust his status to lawful permanent resident based on a concurrently filed Form I-130 relative petition. The Form I-130 petition was filed by an individual, [REDACTED] who purported to be his wife. On June 7, 1994, the Form I-485 application was denied for abandonment. The applicant departed the United States in or about 1996.

On December 14 1997, the applicant returned to the United States as a B-1 nonimmigrant visitor for business with authorization to remain until January 13, 1998. On May 29, 2002, he filed a second Form I-485 application based on a Form I-140 petition for alien worker. On November 7, 2002, the Form I-485 application was denied.

On July 9, 2007, the applicant filed a third Form I-485 application to adjust his status to lawful permanent resident based on an approved Form I-130 petition filed on his behalf by his present wife.

On September 5, 2007, an officer of United States Citizenship and Immigration Services (USCIS) interviewed the applicant in connection with his third Form I-485 application. When questioned, the applicant claimed that he had no knowledge of his first Form I-485 application, and that he was never married to [REDACTED]. He asserted that he paid a preparer to assist him with gaining employment authorization, and that he did not participate in filing fraudulent applications.

The field office director determined that the applicant failed to show that he did not participate in filing a fraudulent Form I-485 application. Thus, the field office director found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure benefits provided under the Act by willful misrepresentation.

On appeal, counsel maintains that the applicant was not involved with the filing of his first Form I-485 application, and that he did not engage in activity that renders him inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel states that the applicant hired a handwriting expert, and that “[i]t was determined that [the] applicant signed the I-765, but not the I-485 or I-130.” *Brief from Counsel* at 2.

Upon review, the applicant has failed to show that he did not engage in misrepresentation by filing a Form I-485 application based on a false assertions. While counsel contends that the applicant hired a handwriting expert to examine the signatures on the filings, the applicant has not submitted any reports or documentation to support this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). The applicant has not presented other evidence or documentation that establishes by a preponderance of the evidence that he was not involved with the filing of an application based on misrepresentation. Thus, he was properly deemed inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

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 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 the present matter, the applicant stated that he wishes to reside in the United States for the good of his daughter and wife. *Statement from the Applicant*, dated May 24, 2007.

The applicant's wife stated that she and the applicant separated when their daughter was one week old in 1991, and that their daughter didn't know the applicant until 1999. *Statement from the Applicant's Wife*, dated May 23, 2007. She explains that their daughter had difficulty prior to building a relationship with the applicant, and that their daughter needs the applicant. *Id.* at 1. The applicant's wife asserted that she and her children will be forced to relocate to the Philippines if the waiver application is denied, where they will experience poverty and a lack of educational opportunities. *Id.*

The applicant's wife stated that she will endure economic hardship if she remains in the United States without the applicant, as daycare is costly and her teenaged daughter is attending college. *Id.* She added that for over a year their children have grown accustomed to a relationship with the applicant, and that they will endure hardship should they now be separated from him. *Id.*

The applicant's daughter expressed that she experienced emotional difficulty in her early years while lacking a relationship with the applicant, her biological father, and that she wishes to continue to have his presence and guidance. *Statement from the Applicant's Daughter*, dated May 26, 2007. She stated that she will endure significant emotional distress if she is again separated from the applicant. *Id.* at 1.

Counsel asserts that the applicant and his daughter will experience hardship if the present waiver application is denied. *Brief from Counsel* at 1-2. Counsel particularly indicates that the applicant's daughter will suffer emotional hardship if she is separated from the applicant, or if she is compelled to relocate to the Philippines and discontinue the life she knows in the United States. *Id.* at 2.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States. The applicant has not shown that his wife will endure extreme hardship should he depart the United States and she remain. The applicant's wife indicated that she will endure economic difficulty should she reside in the United States without the applicant. However, the applicant has not provided an account of his wife's regular expenses such to show that she faces unusual expenditures that she cannot meet with her income.

The applicant's wife stated that she would require daycare services for her children. However, the applicant has not shown that his wife has children of an age who require childcare. He has not provided birth certificates for the referenced children. On his Form I-485 application he claimed that he has a daughter now age 18, a son now age 23, and a daughter now age 28. The record does not show that any of these individuals require care that would place a financial burden on the applicant's wife.

The applicant's wife did not express that she will experience unusual emotional difficulty as a result of her becoming separated from the applicant.

The applicant's wife indicated that the applicant's daughter will suffer psychological hardship should she reside apart from the applicant. The AAO acknowledges that the applicant's daughter faces an unusual history with her relationship with the applicant due to the fact that she did not have contact with him through the early part of her life. It is evident that losing his regular presence will have a significant impact on her. However, as noted above, the AAO must assess hardship to the applicant's daughter to determine whether it creates additional hardship for the applicant's wife. Further, the AAO is limited to the statements and evidence in the record in order to draw conclusions about the applicant's wife's challenges. While the applicant's daughter will endure unusual emotional challenges, the applicant has not shown that such challenges will raise his wife's hardship to an extreme level.

Considering all stated hardships to the applicant's wife in aggregate, the applicant has not shown that she will experience extreme hardship should she remain in the United States.

The applicant has not shown that his wife will suffer extreme hardship should she relocate to the Philippines to maintain family unity. The applicant's wife stated that her family will face poverty in the Philippines. However, the applicant has not indicated whether he and his wife have contacts or family in the Philippines who may assist them in obtaining employment. Nor has the applicant described his or his wife's job skills, or indicated where they are likely to reside such to show the employment prospects they may face. The applicant has not stated whether he and his wife have savings or assets that may assist them in relocating to the Philippines. Thus, the AAO lacks adequate evidence or information in order to conclude that the applicant's wife will endure significant financial challenges abroad.

The applicant's wife did not state that she would suffer direct emotional difficulty should she return to the Philippines. As she is a native of the Philippines, the record supports that she will not be faced with the challenge of adapting to an unfamiliar language or culture should she return there.

The applicant's wife asserted that her children will be forced to relocate to the Philippines should the applicant depart, and they will lack educational opportunities. However, as discussed above, the applicant has not shown that he or his wife have minor children. The applicant has not established that they have children who would be compelled to relocate outside the United States due to dependence on him and his wife.

The AAO again acknowledges that the applicant's daughter would endure emotional difficulty should she be separated from the applicant, and that her challenges would impact the applicant's

wife. However, the applicant has not shown that his daughter is unable to relocate to the Philippines to maintain unity with the applicant. It is evident that the applicant's daughter would undergo hardship should she end her life in the United States and relocate abroad. Yet, it is noted that United States Citizenship and Immigration Services (USCIS) records show that the applicant's daughter is a native of the Philippines, and the applicant has not described her experience with the country or her familiarity with its language or culture. The applicant has not shown that his daughter would endure hardship that can be distinguished from the challenges often faced by children when they relocate due to the inadmissibility of a parent. The applicant has not shown that his daughter would endure challenges that raise his wife's difficulty to an extreme level.

Considering all elements of hardship to the applicant's wife, should she relocate to the Philippines, the applicant has not shown by a preponderance of the evidence that she will suffer extreme hardship. Thus, the applicant has not shown that denial of the present waiver application "would result in extreme hardship," as required for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.