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



U.S. Citizenship  
and Immigration  
Services

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DATE: DEC 02 2011 OFFICE: LOS ANGELES

FILE: [REDACTED]

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 PETITIONER:

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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines. She 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 willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of her inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her spouse.

In a decision dated April 23, 2009, the director determined the applicant had failed to establish that her spouse would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that the director did not evaluate and analyze the evidence submitted in the applicant's case, and that the director's finding should be reversed. Counsel additionally indicates that the waiver application has been pending since 2000, and that the director should have requested and reviewed updated hardship evidence in the applicant's case. Counsel asserts the evidence in this case demonstrates the applicant's husband will experience extreme emotional, physical and financial hardship if the applicant is denied admission into the U.S. and he either moves with her to the Philippines, or remains in the U.S. separated from the applicant. To support these assertions, counsel submits an affidavit written by the applicant's husband, as well as employment and medical documentation. Counsel does not contest that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The entire record was reviewed and considered in rendering a decision on the appeal.

With regard to counsel's assertions that the director should have requested and allowed updated hardship evidence to be submitted in the applicant's case, and that the director's decision should be reversed based on his failure to address and evaluate evidence submitted in support of the waiver application, the AAO notes that it maintains plenary power to review each appeal on a *de novo* basis. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

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.

Counsel does not contest that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Moreover, the record reflects that on August 28, 1991, the applicant gained admission into the United States using a fraudulent passport and visa. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission into the United States through fraud.

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.

The applicant is married to a U.S. citizen. The applicant's spouse is a qualifying relative for section 212(i) of the Act, waiver of inadmissibility purposes.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA has also held that the common or typical results of 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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 BIA 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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In support of the applicant’s extreme hardship claim, the record contains an affidavit written by the applicant’s husband in September 2001. The applicant’s husband states that he and the applicant have been married since February 2000 and that he would be unable to survive without his wife near him. He states that although he is originally from the Philippines, he has lived in the U.S. since 1990, and he indicates that all of his children and grandchildren live in the U.S. The applicant’s husband states that his income is small and that he depends on the applicant’s income to live comfortably in the U.S. and to be able to afford medical attention and medications. He does not want to be dependent on, or a burden to, his children and he states he is too old (77-years-old at the time) to move and start working in the Philippines. He also believes the stress of living in the Philippines would worsen his medical conditions. The record contains 2004 paystubs for the applicant and her husband. The record also contains a February 2009, health insurance Work Status Report reflecting the applicant’s husband was diagnosed with Dementia – Cognitive

Impairment, and recommending that he stop working. The Work Status Report notes that the applicant's husband's physical condition is fine, and it notes that two daughter-in-laws accompanied him to the appointment. The record contains a February 2009 Employee Separation Report reflecting the applicant's husband retired, effective March 2, 2009, due to health conditions per his health care provider. The record also contains a June 1, 2009, doctor's note written on a medical prescription form, stating the applicant is taking care of her husband and needs to take off work as needed.

Upon review, the AAO finds the evidence in the record fails to establish that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

Although counsel submitted updated medical condition and employment status evidence for the applicant's husband on appeal, it is noted that the husband's affidavit was a resubmission of a 2001 statement that did not discuss or reference the applicant's husband's new conditions or circumstances. The financial expense evidence contained in the record fails to establish the applicant's husband is financially reliant on the applicant, and the record contains no evidence to establish that the applicant provides her husband with medical insurance, or that he is reliant upon her for medical care and medications. There is no evidence to indicate that the applicant's husband suffers from a physical illness. Moreover, the medical note indicating the applicant needs to take off work as needed to care for her husband's dementia condition fails to specify the type and amount of care she would provide, and fails to establish that the applicant actually does provide care to her husband. The record additionally lacks evidence to corroborate the claim that the applicant's husband would suffer financial hardship if he moved to the Philippines, and the evidence in the record fails to address or establish that the applicant's husband would be unable to obtain care for his dementia condition in the Philippines.

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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

**ORDER:** The appeal is dismissed.