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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**



[REDACTED]

415

DATE: DEC 07 2011

Office: LOS ANGELES

[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 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.

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 seeking to procure a visa 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 she may live in the United States with her spouse.

In a decision dated December 15, 2008, the director determined the applicant had failed to establish that her husband 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 erroneously found the applicant to be inadmissible for fraud or willful misrepresentation. Counsel asserts that the applicant did not materially misrepresent her visitor intent when she entered the U.S. in May 2001 and that, although the applicant obtained an H1B work visa through a fraudulent employment scheme, she was unaware of the scheme, and was an innocent victim of the employment agency and their attorneys. In the event that the applicant is found to be inadmissible, counsel asserts that her husband would suffer extreme emotional and financial hardship if she were denied admission. In support of these assertions the record contains affidavits written by the applicant and her husband, Philippines country conditions information, an affidavit from the applicant's sister attesting to the applicant's good character, and articles on the effect of relocation on senior citizens, and on depression in men. The entire record was reviewed and considered in rendering a decision on the appeal

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.

The Ninth Circuit Court of Appeals, in whose jurisdiction this case arises, held in *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir. 1977), that a misrepresentation must be deliberate and voluntary, that proof of an intent to deceive is not required, and that knowledge of the falsity of a representation is sufficient. Similarly, in *Chow Bing Kew v. United States*, 248 F.2d 466, 469 (9th Cir. 1957), the Ninth Circuit defined "willfully" to require proof that the misrepresentation was voluntarily and deliberately made.

A misrepresentation is generally material only if by it, the alien received an immigration benefit for which s/he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759; 108 S. Ct. 1537 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). The fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, other documentation, or admission must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

In the present matter, the director found the applicant materially misrepresented herself to the Service when she applied for, and obtained an H1B employment visa.

The record reflects the applicant obtained an H1B employment visa to work as an accountant at Walnut Health Care Products on March 4, 2002. On January 14, 2004, the Service sent the applicant a Notice of Intent to Revoke (NOIR) her H1B visa, based on evidence that she was never employed by Walnut Health Care Products, and that the position was non-existent. The applicant was allowed 30 days to respond to, and/or rebut the grounds for revocation. The applicant did not reply to the NOIR, and the H1B visa approval was revoked on February 23, 2004.

The applicant states in a letter contained in the record that she sought the help of employment agency, Job Seeker International, to help her find employment in the U.S. after her arrival in this country in May 2001. She states she had no knowledge that the agency was involved in illegal employment schemes. She also states, however:

[Y]es I was able to get an H1B visa and a social security number and I am ready to work anywhere I want. And I was wrong, at that time I have no knowledge of how the system work as I do now. I am now aware that I worked illegally for some time, for which I deeply, deeply regret.”

Counsel asserts that the applicant did not see or sign the Form I-129, Petition for a Nonimmigrant Worker (Form I-129) submitted on her behalf by Walnut Health Care Products. Counsel asserts that a misrepresentation must be made with knowledge of its falsity to be willful for section 212(a)(6)(C)(i) of the Act purposes, and counsel indicates the applicant did not know the Form I-129 contained false accountant qualifications information about her. Counsel concludes that because the applicant had no knowledge of the falsity of her H1B employment visa petition information she is not inadmissible under section 212(a)(6)(C)(i). Counsel also asserts, however, that the applicant received her H1B visa in March of 2002 for work with Walnut Health Care Products, Inc., but that she “[d]id not feel comfortable with Walnut’s employment practices because they refused to pay her as agreed, so she decided she would not work for that company.” Counsel states further that it was due to Walnut’s failure to comply with its legal duties to report the end of the employment relationship to the Service and to provide the applicant with funds needed to depart the country, that the applicant was stuck in the U.S. and unable to return to the Philippines. *See Supplemental Legal Brief*, dated August 9, 2011. These statements reflect the

applicant had contact with Walnut Health Care Products, Inc., that she had employment wage discussions with the company, and that she was aware that her H1B employment visa was issued for employment as an accountant for Walnut Health Care Products, Inc. The record contains no evidence to indicate the applicant has any background or training in accounting, and it is unclear on what basis the applicant would have been qualified to work as an accountant for Walnut Health Care Products, Inc. To the contrary, the employment related information contained in the record reflects that all of the applicant's work experience is in the field of dentistry.

The Form G-325, Biographic Information forms contained in the record and signed by the applicant under penalty of perjury state that she worked as a dentist in the Philippines before coming to the U.S. The Form G-325 information indicates further that the applicant began working as a dental assistant for [REDACTED], in Glendale, California in May 2001, ten months prior to obtaining an H1B visa in March 2002. After obtaining the H1B employment visa, the applicant continued to work as a dental assistant for [REDACTED] through November 2002. She then began work as a dental assistant for Wilshire Park Dental Inst. in Los Angeles, California from November 2002 through May 2003, at which time she began work as a dental assistant for Century City Dental Group in Los Angeles. The Form G-325 information reflects the applicant worked at Century City Dental Group until March 2008. Since March 2008, the applicant has worked as a dental assistant with Santa Monica Family Dentistry in Santa Monica, California.

Although the applicant and counsel indicate that the applicant did not intend to work illegally in the U.S. when she was admitted as a visitor in May 2001, the above evidence reflects that the applicant began working as a dental assistant almost immediately after her admission into the country. She worked as a dental assistant without employment authorization for 10 months after her arrival in the U.S. Moreover, the record reflects that upon receipt of her H1B visa, the applicant continued her work at the dental office rather than working as an accountant pursuant to the terms of her H1B visa. Counsel indicates that the applicant did not see or sign the Form I-129 petition submitted on her behalf by Walnut Health Care Products, Inc., and that she did not know the Form I-129 contained false accountant qualifications information about her. However, counsel also states that the reason the applicant did not work as an accountant after she obtained her H1B visa, was because Walnut Health Care Products, Inc. refused to pay her the agreed-upon salary.

The record reflects that the applicant began working in the U.S. without authorization within weeks of her arrival, and that she has continuously worked as a dental assistant since her arrival. The applicant knew that her prospective employment with Walnut Health Care, the basis for the H1B petition, was as an accountant, a position for which she has no apparent qualifications. The record supports the conclusion that the applicant knowingly sought H1B status for employment that did not exist and/or for which she was unqualified. It reflects that she did not intend to accept offered employment as an accountant for Walnut Health Care, but instead intended to use H1B status to continue working as a dental assistant. The record supports a finding that the applicant obtained an H1B work visa through willful and material misrepresentation. The applicant has thus failed to overcome the director's finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or material misrepresentation.

Section 212(i) of the Act provides that:

- (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. *See 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.

The record in this case contains references to hardship that the applicant’s sister and niece will suffer if the applicant is denied admission into the United States. The AAO notes that the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act. Hardship to her sister and niece shall therefore not be considered.

In support of the applicant’s extreme hardship claim, the record contains letters written by the applicant and her husband indicating her husband was born and raised in the U.S., that his entire family is in the U.S., and that he has worked as a maintenance worker for the City of Compton for over twenty years. The applicant’s husband states he was addicted to betting, gambling and alcoholism when he was younger, and that the applicant’s love and care helped him break these addictions. The letters indicate the applicant’s husband would experience emotional hardship if he remained in the U.S. without the applicant, due to separation. The letters also indicate the applicant’s husband would experience financial hardship in the U.S. because the applicant contributes to their household expenses. If the applicant’s husband moved to the Philippines, he fears he would be unable to find work because he is over fifty years old, and because he does not speak the language or know the culture. The applicant’s husband also does not want to lose his current healthcare benefits, or his access to U.S. quality healthcare. In addition, the applicant’s husband fears he could be kidnapped or could experience serious harm or death due to his

American nationality, and due to general crime and instability in the Philippines. The record contains general country conditions information on the Philippines, a letter from the applicant's sister attesting to the applicant's good character, and general articles on the effect of relocation on the elderly, and on depression in men.

Upon review, the AAO finds the evidence in the record fails to show 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.

The letters submitted in this case fail to demonstrate that the applicant's husband would experience hardship beyond that normally associated with removal if he remained in the U.S. or if he relocated to the Philippines. Although the assertions made by the applicant and her husband are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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 record contains no evidence to corroborate the statements that the applicant's husband suffered from gambling or alcohol addictions, or that the applicant cured him of these addictions, and the record lacks any other evidence to corroborate the assertion that the emotional hardship the applicant's husband would experience if he lived separately from the applicant would constitute extreme emotional hardship. The record additionally lacks evidence of the applicant's husband's expenses or evidence to indicate that he would experience extreme financial hardship if the applicant were denied admission into the United States. The country conditions evidence contained in the record is also general, and fails to demonstrate that the applicant's husband would be unable to find work in the Philippines, or that he would face a countrywide or specific threat or hardship if he moved with the applicant to the Philippines.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present matter, the applicant has established only that her husband would experience the type of emotional and

financial hardship commonly associated with removal or inadmissibility, if the applicant is denied admission into the United States.

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.