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



U.S. Citizenship
and Immigration
Services

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#5

Date: DEC 15 2011

Office: SANTA ANA

FILE: [REDACTED]

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:

[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,

Maria Feh

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that in March 2002, the applicant filed a Form I-485 claiming eligibility for an immigrant visa based on marriage to a U.S. citizen, namely, [REDACTED]. A fraudulent marriage certificate was submitted with the underlying Form I-130, Petition for Alien Relative (Form I-130). Both the Form I-130 and Form I-485 were ultimately denied, in September 2004, for failure to appear at the I-130/I-485 interview. It was later determined that the applicant had never been married to the individual who petitioned for the applicant on the Form I-130, and who was referenced as the applicant's spouse in the Form I-485 application. The applicant was thus found to be inadmissible to the United States pursuant to 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 attempted to procure permanent residence by fraud or willful misrepresentation. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had 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 March 10, 2009.

In support of the appeal, counsel submits a brief, dated May 6, 2009. The entire record was reviewed and considered in arriving at a decision on the appeal.

On appeal, counsel contends that the applicant was unaware that an application for permanent residency based on marriage to a U.S. citizen had been filed on his behalf. *Brief in Support of Appeal*, dated May 6, 2009.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain permanent residency by fraud or misrepresentation. As the record indicates, the applicant signed his name, under penalty of perjury, on numerous forms, including the Form I-485 and the Form 325A, Biographic Information, that contained fraudulent information. Moreover, documentation was presented, specifically, a marriage certificate, that was blatantly false. The applicant had the duty and the responsibility to review the forms and the compiled documentation prior to submission.

Moreover, with respect to counsel's assertion that the applicant made a timely retraction of his misrepresentation, the record does not establish that the applicant admitted the fraudulent nature of his permanent resident application at first opportunity. The AAO notes that in September 2004, when the applicant was advised of the denial of his I-485 and the underlying I-130 applications, the district director specifically noted in her decision that an application had been filed on his behalf as the spouse of a United States citizen. *See Decision of the District Director*, dated September 10, 2004. Prior counsel notes that when the applicant received the letter "notifying him about his failure to show up in an interview based on a 'wife's' petition, it became clearer to him [the applicant] that he was defrauded...." *See Brief from [REDACTED]* dated May 6, 2008. The applicant did not "immediately admit the truth" as noted by counsel. *Supra* at 3. He remained silent from 2004 until questioned by the interviewing officer at his adjustment of status interview in 2008. As such, based on the evidence in the record, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (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:

- (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 immigrant 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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-Moralez*, 21 I&N Dec. 296, 301 (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 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 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.*

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 applicant's U.S. citizen spouse contends that she will suffer hardship if the applicant is unable to reside in the United States. In a declaration the applicant's spouse contends that she is very stressed, depressed and upset about her husband's immigration status. She asserts that she cannot describe the loneliness and feeling of emptiness she is suffering just thinking of how her life will be without her husband. She affirms that she does not want to be separated from her husband. In addition, the applicant's spouse notes that she is pregnant and cannot imagine having to raise their child without the applicant as she needs his emotional, physical and financial support in rearing their child. She explains that her husband usually takes charge of everything---from the household work, bills and her health and physical care. *Affidavit of* [REDACTED] dated April 30, 2008.

No supporting documentation has been provided establishing the hardships the applicant's spouse asserts she will experience were her husband to relocate abroad as a result of his inadmissibility. Nor has any documentation has been provided establishing that the applicant's spouse would be unable to return to the Philippines, her native country, to visit the applicant. In addition, with respect to the financial hardship the applicant's spouse claims she will experience if her husband relocates abroad, the record establishes that the applicant's spouse made over \$95,000 in 2007. *See Form W-2, Wage and Tax Statement for 2007*. It has not been established that without the applicant's physical presence in the United States, his spouse will experience financial hardship. Alternatively, it has not been established that the applicant would be unable to obtain gainful employment in the Philippines and assist his wife should the need arise. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 AAO recognizes that the applicant's spouse will endure some hardship as a result of long-term separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

With respect to relocating abroad to reside with the applicant due to his inadmissibility, the applicant's U.S. citizen spouse explains that she immigrated to the United States more than ten years ago and were she to relocate abroad, she would suffer emotional hardship due to long-term separation from her relatives, including her lawful permanent resident parents and sister, her church and her community. In addition, the applicant's spouse contends that she has been gainfully employed as a registered nurse since 2000, earning over \$95,000 per year plus dental, vision and medical coverage, and were she to relocate abroad, she would not be able to obtain gainful employment in her area of expertise due to her age and the substandard economy. Moreover, the applicant's spouse asserts that were she to relocate abroad, she would not be able to keep up with her outstanding financial obligations, including two mortgage loans totaling \$869,000, credit cards debts

of \$17,000, and other financial obligations of \$17,5000 per year. Finally, she contends that she would suffer as she would not be able to obtain affordable and effective medical treatment as a result of the loss of her current medical benefits. *Supra* at 1-3, 6-11. In support, prior counsel has submitted documentation establishing age restrictions for individuals interested in applying for registered nursing positions in the Philippines and evidence of the low wages paid to registered nurses in the Philippines. In addition, evidence of the applicant's spouse's financial obligations has been submitted. Moreover, prior counsel has submitted documentation establishing the applicant's spouse's gainful employment and the benefits provided to her, including medical coverage. *Letter from Daniel Trinh, HR Representative, Kaiser Permanente*, dated March 18, 2008. Finally, prior counsel has provided articles detailing the problematic country conditions in the Philippines.

The record establishes that the applicant's spouse has been residing in the United States for over eleven years. Based on the applicant's spouse's extensive family and other ties to the United States, her gainful employment with medical coverage, her home ownership, and the problematic country conditions in the Philippines, including high poverty and unemployment¹, the AAO concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to the Philippines to reside with the applicant due to his inadmissibility.

Although the applicant has demonstrated that his spouse would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the applicant's spouse in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record

¹ As noted by the U.S. Department of State,

The portion of the population living below the national poverty line increased from 24.9% to 26.5% between 2003 and 2009, equivalent to an additional 3.3 million poor Filipinos.

demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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. The application is denied.