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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**



HS

FILE: [REDACTED] Office: FRESNO, CA Date:

JAN 04 2011

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:

SELF-REPRESENTED

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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of The Philippines who was 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 entered the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the stepfather of three U.S. citizens. He seeks 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 family.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated February 12, 2010.

On appeal, the applicant states that his spouse is caring for seven children and needs his help if she is to continue working and paying the mortgage on their home. *Form I-290B, Notice of Appeal or Motion*, dated February 25, 2010.

In support of the waiver application, the record includes, but is not limited to, statements from the applicant's spouse; earnings statements for the applicant's spouse; documentation of Social Security payments received by the applicant's spouse and one of his stepdaughters; and documentation relating to the applicant's spouse's responsibility for three foster children. The entire record was reviewed and all relevant information considered in reaching 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 record establishes that the applicant and his U.S. citizen spouse were married on June 6, 2007 in The Philippines. On July 2, 2007, the applicant entered the United States on a B-2 visitor's visa, departing on December 14, 2007. On December 29, 2007, he returned to the United States as a nonimmigrant visitor. At the time of his second admission, the applicant was informed that his stay in the United States was limited to 30 days, i.e., until January 28, 2008, and that he should not file for an extension of his period of admission, a change of status or adjustment of status. On January 8, 2008, the applicant's spouse filed a Form I-130, Petition for Alien Relative, on his behalf, which was approved on September 8, 2009. On October 1, 2009, the applicant filed a Form I-485, Application

to Register Permanent Residence or Adjust Status, based on the approved Form I-130. The applicant has remained in the United States since his December 29, 2007 admission.

Whether the applicant committed fraud or willfully misrepresented a material fact when he entered the United States as a nonimmigrant on December 29, 2007 comes down to his intent at the time, i.e., whether he was an intending immigrant at the time of his admission. With regard to immigrant intent, the AAO notes that the Department of State (DOS) has developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by marrying and taking up permanent residence." *DOS Foreign Affairs Manual*, § 40.63 N4.7-1(3). Under this rule, if an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, a consular officer may presume the applicant misrepresented his or her intention in seeking a visa or entry. 9 FAM 40.63 N4.7-2. Although the AAO is not bound by the Foreign Affairs Manual and does not find its language to cover the circumstances of the present case, we find its analysis to be instructive for our review of the actions taken prior to and immediately following the applicant's December 29, 2007 admission.

The applicant was admitted to the United States on December 29, 2007 with the understanding that he would not seek to extend his visit beyond the 30 days he had been authorized, or change or adjust his status. This understanding is noted in writing in his passport and on his Form I-94, Departure Record. However, at the time of the applicant's nonimmigrant admission, he had already applied for and received a California Identification Card (CIC), a document issued to California *residents* who do not have other valid identification. The July 5, 2007 issue date on the CIC indicates that the applicant applied for this document during his visit to the United States that began on July 2, 2007. Further, the AAO notes that the Form I-130 in the record reflects that the applicant's spouse signed and dated it on January 2, 2008, just four days after he arrived in the United States and, six days later, filed it with United States Citizenship and Immigration Services (USCIS), thereby taking the first step necessary for the applicant to acquire permanent residence.

The record contains no statement from the applicant regarding his intent at the time of his December 29, 2007 admission, nor any explanation of the circumstances that led to his failure to depart the United States prior to January 28, 2008.<sup>1</sup> In the absence of an alternate explanation for the applicant's failure to abide by the terms of his admission, the AAO finds the applicant's filing for a CIC, which he did prior to his December 29, 2007 admission, and the immediate steps taken by his spouse to initiate the immigration process once he had entered the United States to establish, by a preponderance of evidence, that he was an intending immigrant at the time of his December 29, 2007 admission. The burden of proof in establishing admissibility to the United States is on the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the applicant is inadmissible to the United

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<sup>1</sup> The AAO notes the applicant's statement on the Form I-601 in which he indicates that he believes he is inadmissible to the United States based on his spouse's desire to have him in the United States on New Year's Day. This statement, however, does not explain why his presence in the United States for New Year's Day, January 1, 2008, prevented him from returning to The Philippines by January 28, 2008, the date on which his visa expired.

States under section 212(a)(6)(C)(i) of the Act for having obtained an immigration benefit through fraud or the willful misrepresentation of a material fact.

Section 212(i) of the Act provides that:

- (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 stepchildren 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 (BIA) 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 BIA 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 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 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 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.*

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 BIA 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 AAO now turns to the question of whether the applicant in the present case has established that his U.S. citizen spouse would experience extreme hardship as a result of his inadmissibility.

The applicant has not asserted that his spouse would experience any hardships if she and her children relocate with him to The Philippines. In the absence of clear assertions from the

applicant, the AAO may not speculate as to what hardships the applicant's spouse would encounter if she returns to The Philippines. We must, therefore, conclude that the applicant has failed to establish that his spouse would experience extreme hardship upon relocation.

The record contains two statements from the applicant's spouse, dated February 2, 2010 and February 25, 2010, in which she states that she is caring for seven children, three of whom are hers and four of whom are foster children. The applicant's spouse states that she is also working, has no family of her own in the United States and that she depends on the applicant's assistance. She contends that if the applicant's waiver application is denied, she will have to give up her job since a babysitter for seven children will be too expensive. She also claims that without employment, she will not be able to pay her mortgage and that her children will then have no place to live. The applicant's spouse further asserts that one of her foster children, a one-year old, has pneumonia and that she cannot care for him and his one month old brother by herself. The applicant's spouse states that she loves the applicant and that without him, her life is miserable. She asserts that, having received notice of the applicant's removal, she is depressed and cannot sleep or eat.

The record contains documentation that establishes the applicant has three children from her first and second marriages. It also indicates that as of October 5, 2009, she was responsible for three foster children, as documented by [REDACTED] contained in the record. While the AAO acknowledges the applicant's spouse's claims regarding her responsibility for a fourth foster child, the record contains no documentary evidence to support this assertion. Neither does it indicate, as claimed by the applicant's spouse, that she is carrying for two infants, one of whom has pneumonia. The foster children documented in the record are aged 7, 6 and 1 year and 11 months, and no medical statement or report establishes that any of them have a medical problem. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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 AAO also finds that the documentation submitted to establish the October 5, 2009 placement of three foster children with the applicant's spouse fails to indicate the nature of their placement, i.e., whether it is for the long-term or was made on an emergency basis and has already terminated.<sup>2</sup> Absent this information, the AAO is unable to determine that the applicant's spouse's responsibility for these children is a hardship factor in this proceeding.

The AAO also observes that the record contains insufficient evidence to support the applicant's spouse's claim that she would suffer financial hardship as a single parent. The record documents the following income for the applicant's spouse: a total of \$2,525 a month for the care of the three foster children in her care; a Social Security benefit of \$5,940 annually, as well as a Social Security payment in the same amount to her oldest child; and approximately \$7,400 a year in child support payments from her second husband. While the record also documents that the applicant's spouse was employed by the [REDACTED] during 2009, her earnings statements

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<sup>2</sup> The AAO notes that the applicant's spouse's 2008 tax return indicates that at some point during the tax year she provided foster care for two other children.

report varying hours, thereby preventing the AAO from reliably determining her annual income at either of these jobs. Moreover, it is unclear from the record whether the applicant's spouse ended her employment at the [REDACTED] when she began working for [REDACTED] or continues to be employed by both organizations. We also note that the record does not document, e.g., published country conditions materials on the Philippine economy and unemployment, that the applicant could not obtain employment upon his return to The Philippines and assist his spouse financially from outside the United States.

The record also fails to document the financial obligations that would become the responsibility of the applicant's spouse in his absence. The applicant's spouse claims that she would have to stop working because childcare for seven children would be too expensive. She also asserts that having no employment, she would lose her home. However, as already discussed, the record is unclear as to the number of children for which the applicant's spouse would ultimately be responsible. Further, the record does not establish that the applicant's spouse would have to engage a childcare provider(s) for all of the children she states are currently living with her. The applicant's own children, aged 12, 10 and 9 years, and at least one of her foster children, aged 7, are all of school age. Of the remaining foster children who were in the applicant's spouse's care as of October 5, 2009, one is 6 years of age and the other will be two years of age in February 2011, and the AAO acknowledges that both may require full-time childcare. The record, however, contains insufficient information to establish the extent to which the other children would need childcare services outside of school hours. As a result, it fails to establish that the applicant's spouse would be unable to retain her employment because of the high cost of childcare for seven children. The AAO further observes that the record contains no documentary evidence that demonstrates the applicant's spouse owns a home that would be placed in jeopardy by the applicant's removal or that she makes mortgage payments. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Based on the limited financial information that has been submitted, the record does not establish the impact of the applicant's removal on his spouse's financial situation.

The applicant's spouse's claims of emotional hardship are also unsupported by the record. Although she asserts that she is depressed and is unable to sleep or eat as a result, no medical statements or records, including an evaluation from a licensed mental health practitioner, demonstrate that this is the case. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Accordingly, the record does not establish that the applicant's spouse would experience extreme hardship if his waiver application is denied and she remains in the United States.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, he has failed to establish eligibility 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 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.