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



**U.S. Citizenship
and Immigration
Services**

7/5

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date: JAN 24 2011

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application 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 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 procured entry into the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen (USC) and is the beneficiary of a Petition for Alien Relative (Form I-130) filed on her behalf by her USC spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The Field Office Director found 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 July 24, 2008.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in denying the applicant's waiver request because the applicant had submitted sufficient credible evidence to establish extreme hardship to her spouse. *Form I-290B*, filed August 19, 2008, and the accompanying brief submitted with the appeal.

The record includes, but is not limited to, counsel's brief on appeal, extreme hardship declaration by the applicant's spouse, letters of employment from the applicant and her spouse's employers, copies of Wage and Earnings Statements for the applicant and her spouse, copies of U.S. Individual Income Tax Returns for the applicant and her spouse, copies of bank statements, copies of some bills in the name of the applicant and her husband, and a copy of an "Adult Evaluation Report" by [REDACTED] pertaining to the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record reflects that on May 5, 1991, the applicant entered the United States using a passport and visa belonging to another person. On June 8, 1996, the applicant and her husband were married in Los Angeles, California. On March 3, 2000, the applicant's USC spouse filed a Form I-130 on the applicant's behalf. The Form I-130 was approved on May 3, 2000. On April 4, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Form I-601. On July 24, 2008, the Field Office Director denied the applicant's Form I-601, finding that the applicant had failed to demonstrate extreme hardship to a qualifying relative.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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.

The record reflects that the applicant’s husband is a 41-year-old native of the Philippines and a citizen of the United States. The applicant and her spouse do not have any children. The applicant’s spouse asserts that removal of the applicant from the United States will result in extreme and “exceptionally” unusual hardship to him.

The applicant’s spouse states that he and the applicant have known each other since 1992 and have been married since 1996. The applicant’s spouse asserts that he has lost his parents, that he is estranged from his brother, that he and the applicant have lost two children through miscarriage, and that the applicant is the only family he has. The applicant’s spouse asserts that if the applicant is removed from the United States, “I do not believe that I am emotionally capable of withstanding the loss of [the applicant]. Frankly, I do not know what I would do if I were to lose her.” *See Extreme Hardship Declaration by* [REDACTED] dated August 31, 2007. The record contains a copy of an “Adult Evaluation Report” of the applicant’s spouse by [REDACTED], dated August 28, 2007. [REDACTED] diagnoses the applicant’s spouse with Adjustment Disorder of Adult Life with Depressed Mood. [REDACTED] states that the applicant’s spouse is experiencing a significant level of depression and emotional instability because he

fears that he will not be able to manage situations in his life adequately should the applicant be forced to leave the United States. [REDACTED] also states that the applicant's spouse will face severe economic hardship if the applicant is forced to return to the Philippines and not allowed to remain in the United States with her spouse. See an "Adult Evaluation Report" by [REDACTED] dated August 28, 2007.

The AAO acknowledges that separation from the applicant could cause some challenges to her spouse, however, it does not find the evidence in the record sufficient to demonstrate that the challenges the applicant's spouse faces rises to the level of extreme hardship. While the input of a mental health professional is respected and valuable, the AAO notes that the report by [REDACTED] is based on one interview with the applicant's spouse. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship. With regards to financial/economic hardship, while the record has information on the family's income, it does not have detailed information on the family's expenses. Without such documentation, the AAO cannot make a determination that separation from the applicant will result in extreme financial hardship to her spouse.

Thus, the AAO finds that the evidence in this record, when analyzed cumulatively, fails to establish that the applicant's husband would suffer extreme hardship if the applicant were to be removed from the United States and he remained in the country.

Regarding relocation to the Philippines, the applicant's spouse asserts that he has been residing in the United States since he was seventeen years old; he has a good paying job as an Insurance Claims Examiner with very good benefits and does not want to give up his employment in the United States. The applicant's spouse asserts that he will have difficulties getting a job in the Philippines because there is less demand for people with his type of experience there and his age will put him at a disadvantage. The applicant's spouse also asserts that his marriage to the applicant will not be recognized in the Philippines because the applicant was divorced before marrying him and divorce is not recognized in the Philippines. See *Extreme Hardship Declaration* by [REDACTED], dated August 31, 2007.

While the AAO acknowledges that the applicant has spent a significant amount of time residing in the United States and has a good paying job that may be impacted upon relocation, it finds the evidence in the record insufficient to demonstrate that the applicant's spouse will suffer extreme hardship upon relocation to the Philippines. The record does not contain documentary evidence such as country condition reports on the Philippines that demonstrate that the applicant's spouse would be unable to obtain employment or that he would face discrimination if he relocates there. 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 notes that other than the statement from the applicant's husband, the record does not include any evidence of financial, medical, or other types of

hardship that the applicant's husband would experience if he relocated to the Philippines with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's spouse would suffer extreme hardship upon relocation to the Philippines.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties the applicant's spouse would face, when considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative, as required for a waiver of inadmissibility under section 212(i) of the Act.

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.