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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

115

DATE: **JUN 01 2011** Office: ATLANTA, GEORGIA

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)

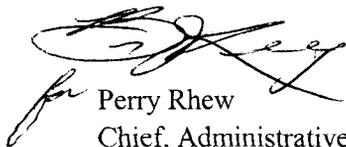
ON BEHALF OF APPLICANT:

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, Atlanta, Georgia, 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 procuring entry into the United States through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf. 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 February 27, 2009.

On appeal, the applicant's spouse asserts that denying the applicant's waiver request will result in extreme hardship for him. The applicant's spouse requests that the director reconsider the applicant's waiver application. *See Form I-290B*, dated March 11, 2009.

The record includes, but is not limited to, statements from the applicant's spouse, counsel's brief in support of the waiver application, copies of the applicant's spouse's W-2 Wage and Tax Statements for 2004 and 2005, copies of U.S. Individual Income Tax Returns for the applicant's spouse and other financial documents, a copy of a mortgage application, a copy of a divorce decree and child support agreement between the applicant's spouse and his prior spouse, and copies of country condition reports on the Philippines. 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.
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- (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 the applicant procured entry into the United States on April 24, 1999, by presenting a passport and non-immigrant visa under an assumed name. On May 13, 2005, the applicant's United States citizen spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf and the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The Form I-130 was approved on February 9, 2009. On August 2, 2007, the applicant filed a Form I-601 waiver. On February 27, 2009, the Field Office Director denied the Form I-601, finding that the applicant had procured an immigration benefit by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. The applicant does not dispute the basis of her inadmissibility into the United States.

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 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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. ██████ 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 a qualifying relative, 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.

In this case, the record reflects that the applicant’s spouse, ██████ is a 39-year-old citizen of the United States. The applicant and her spouse were married in ██████ Georgia, on January 23, 2004, and they do not have any children together. The record reflects that the applicant’s spouse has a daughter from a prior marriage and that she resides in Ohio with her mother.

The applicant’s spouse, states that he and the applicant have a great relationship, that they love each other very much, that he cannot adjust to separation from the applicant and that if the applicant is removed from the United States, he would “suffer tremendously.” *See Declaration of ██████* dated December 7, 2006. The applicant’s spouse states that he should have the right to have the applicant live with him in the United States and that the thought of separation from the applicant makes him angry and depressed. *Id.* The applicant’s spouse also states that he has financial obligations and that he needs the applicant to be with him and help him meet their financial obligations. *Id.* The applicant’s spouse further states “[the applicant’s] deportation would devastate our marriage as far as our hopes of raising children and building a successful life together. The emotional and financial stress that being separated

would cause is extreme. With a daughter of my own here in the U.S. it would be extremely difficult to support a child here and a family in another country.” See *Form I-290B*, dated March 11, 2009.

The AAO acknowledges that separation may cause some challenges to the applicant’s spouse, however, it does not find the evidence in the record sufficient to demonstrate that any emotional difficulties he is experiencing are more serious than the type of hardship a family would normally suffer when faced with the prospect of a spouse’s removal or exclusion from the United States. The applicant does not provide medical records, detailed testimony, or other evidence to show that any emotional or psychological hardships her husband faces are unusual or beyond what would be expected upon family separation due to one member’s inadmissibility. As to the financial hardship of separation claimed by the applicant’s spouse, the record does not contain evidence to show that the applicant has made prior financial contributions to the family and the amount of the contributions. The AAO acknowledges that the applicant’s spouse has obligations to pay child support, however, the record does not contain detailed information on the family’s other expenses. Without such documents, the AAO cannot conclude that family separation will cause extreme financial hardship to the applicant’s spouse. In addition, the record reflects that the applicant’s spouse completed a Form I-864, Affidavit of Support, in 2004, which shows that his income in 2004 was \$62,711, and he testified that his income alone was sufficient to support his family, including the applicant.

Therefore, based on the evidence in the record, the AAO finds that the applicant has failed to establish that her spouse would suffer extreme hardship if her waiver request is denied and she is removed to the Philippines while her spouse remains in the United States maintaining his employment.

Regarding relocation, the applicant provided the following reasons why he does not want to relocate to the Philippines: he was born and raised in the United States, his entire family is in the United States, including his teenage daughter, and they have a close relationship with each other, he has a very good job with benefits, which he does not want to give up, he does not speak Tagalog, the Philippine language, he is concerned about the medical care in the Philippines and the availability of good paying jobs, as well as the level of violence in the country. See *Declaration of [REDACTED]* dated December 7, 2006. In addition, counsel asserts that the applicant’s spouse would endure extreme hardship if he relocates to the Philippines because of the close relationship he has with his family, especially his teenage daughter. Counsel also asserts that the applicant’s spouse would not like to relocate to the Philippines because of the poor prospect of obtaining a good paying job in the Philippines, the lack of security and the political instability in the Philippines. *Counsel’s Brief in Support of Waiver of Inadmissibility(I-601)*, dated July 27, 2007. The record contains copies of various country condition reports on the Philippines including a copy of U.S. Department of State, Bureau of Consular Affairs’ Travel Warning. The U.S. Department of State notes the risk of terrorist activities in the Philippines and kidnap-for-ransom gangs that are active throughout the country and advises U.S. citizens to exercise extreme caution while in the country. See *U.S. Department of State, Bureau of Consular Affairs, Philippines, – Travel Warning*, dated November 2, 2010.

Based on the applicant’s spouse’s birth and long-term residence in the United States, his significant family ties in the United States, his long-term employment with benefits and the lack of security in the

Philippines, the applicant has demonstrated that her spouse would suffer extreme hardship if he were to relocate to the Philippines to live with her.

In sum, although the applicant's spouse has established hardship if he were to relocate to the Philippines, the evidence in the record does not support a finding that the challenges he faces, 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 spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.