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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

[Redacted]

715

DATE: JUN 01 2011 Office: COLUMBUS, OHIO

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio, 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 and child.

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 January 22, 2009.

On appeal, counsel asserts that the director wrongfully determined that the denial of the waiver request would not result in extreme hardship to the applicant's spouse. *Form I-290B*, dated February 4, 2009, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, a statement from the applicant's spouse, counsel's brief in support of the appeal, a letter from [REDACTED], D.O., dated February 24, 2009, regarding the applicant's spouse, copies of U.S. Individual Income Tax Returns for the years 2004 through 2007, completed by the applicant's spouse, as head of household, a copy of a resume and fee schedule for a child care provider and nanny, downloaded from the Sittercity website on February 16, 2009, a copy of an Ohio Apportioned Registration Cab Card from the State of Ohio – Bureau of Motor Vehicles, issued to [REDACTED], dba [REDACTED], on August 21, 2006, with an expiration date May 31, 2007, and a copy of a mortgage statement from Wells Fargo Home Mortgage, dated June 23, 2006. 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 a K-1 visa which she used to enter the United States on April 26, 2006, by willfully misrepresenting her marital status to the consular officer. In doing so, the applicant procured a benefit under the Act, which she otherwise would not have been eligible to receive. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. On October 6, 2006, 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 September 14, 2008. On December 22, 2008, the applicant filed a Form I-601 waiver. On January 22, 2009, the Field Office Director denied the Form I-485, and 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 or her child 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-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 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, [REDACTED], is a 61-year-old citizen of the United States. The applicant and her spouse were married on May 26, 2006, in Las Vegas, Nevada, and they have one child.

The applicant’s spouse states that it will be an extreme hardship for him and the applicant if the applicant is removed from the United States. The applicant’s spouse states that he is a truck driver who is on the road about two hundred and sixty (260) days out of the year, that the applicant takes care of their child while he is away, and that he has no relatives in Ohio who could care for their child if the applicant is removed from the United States to the Philippines. The applicant’s spouse also states that if the applicant takes their child with her to the Philippines, he would be separated from his family, and that the applicant

would have a hard time financially caring for their child in the Philippines. *See Statement from* [REDACTED] [REDACTED], dated December 17, 2008. Counsel asserts that the applicant's spouse would suffer exceptional hardship by remaining in the United States, that the applicant's spouse's schedule would not permit him to care for their child due to the fact that he is a truck driver and that he is on the road around 260 days out of the year, that he has no relatives in Ohio that could care for their child, and that with the applicant's spouse's adjusted gross income in 2007 of \$11,721, he would not be financially able to hire someone to care for their child and still be able to pay the rest of their bills including the mortgage for their home. *See Counsel's Brief in support of the Appeal.* Counsel also asserts that the applicant's spouse would suffer financial hardship if the applicant is removed from the United States because with his salary of \$11,721, he would not be able to hire a child care provider, pay for their mortgage, and meet all their other financial obligations.

The record contains a letter from [REDACTED] D.O., [REDACTED], Columbus, Ohio, stating that the applicant's spouse has been treated in his practice since 1994, that he has been diagnosed and treated for Type II diabetes mellitus, that he has been insulin dependent for the past six years and that his health has worsened over the years. The letter further states that the applicant's spouse has a two year old son, that he provides for his family and that it will be a severe hardship to have the applicant removed from the family. *See Letter from* [REDACTED] D.O., dated February 24, 2009. The record also contains copies of U.S. Individual Income Tax Returns for the applicant's spouse, for 2007, a copy of a Mortgage Statement from Wells Fargo Home Mortgage, dated in 2006, for the premises at [REDACTED] [REDACTED], which is not their current address, and an undated statement from Sittercity for a child care provider and nanny, showing a rate of \$6.00 per hour.

The AAO acknowledges that separation may cause some challenges for the applicant's spouse, however, it does not find the evidence in the record is sufficient to establish that the challenges the applicant's spouse encounters meet the extreme hardship standard. While the letter from [REDACTED] provides a list of the applicant's spouse's medical conditions, it does not provide information on the nature of family assistance needed and the impact denial of the applicant's waiver will have on the applicant's spouse's chronic medical conditions. In addition, the applicant does not provide medical records, detailed testimony, or other evidence to show that any emotional hardship her spouse faces would be unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Regarding the financial hardship of separation, the record does not contain current information on the applicant's family income and expenses. Without such documentation, the AAO is not in the position to determine the level of financial hardship to the applicant's spouse.

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 from the United States to the Philippines while her spouse remains in the United States.

Regarding relocation, counsel asserts that the applicant's spouse would not like to relocate to the Philippines for the following reasons: he only speaks English, he has resided in the United States all his life, he has no family or community ties in the Philippines, he is well adjusted in the United States, he has a steady employment with benefits that provides him enough income to take care of his child, it is highly unlikely that he will be able to start a business in the Philippines, he has Type II diabetes which has been

adequately managed by his doctors in the United States and he wants to continue his treatment, and he is concerned that he may not be able to afford health care and support his family in the Philippines. *See Counsel's Brief in support of the Appeal.*

The AAO acknowledges that the applicant spouse's was born and has resided in the United States, that he has a son in the United States and that he has a business and that he does not have family ties in the Philippines except for the applicant, however, the record does not contain any country condition information on the Philippines to show that the applicant's spouse would be unable to obtain employment and be able to support his family there. Also, there is no evidence in the record to show that the applicant's spouse would be unable to obtain adequate medical care in the Philippines for his Type II diabetes. 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)). Accordingly, the applicant has failed to demonstrate that her spouse would suffer extreme hardship if he were to relocate to the Philippines to be with the applicant.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, 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.