

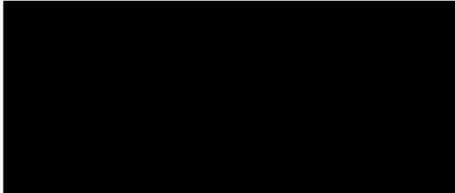
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: JUN 30 2011

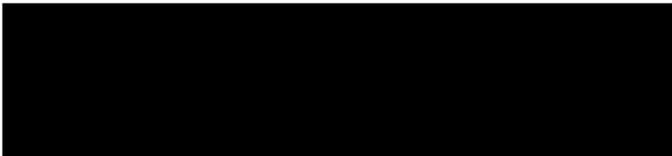
Office: MANILA

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 Acting Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of the Philippines, attempted to procure a nonimmigrant visa by fraud or willful misrepresentation. Specifically, in October 2000, the applicant attempted to obtain an A-2 nonimmigrant visa as a dependent of her spouse, who had been issued an A-2 visa and had subsequently entered the United States in 1999. She presented evidence to demonstrate that her husband was working with the sponsor of the A-2 visa. A consular investigation revealed that the applicant's spouse was not employed by the sponsor of his A-2 visa and moreover, the applicant was aware of this fact when she attempted to procure an A-2 visa. *See Sworn Statement from [REDACTED]* dated November 13, 2000. Consequently, the applicant 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 attempted to procure a nonimmigrant visa by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she is seeking 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 her lawful permanent resident 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 9, 2009.

In support of the appeal, counsel submits a brief, dated April 7, 2009, and a duplicate of the initial Form I-601 submission. The entire record was reviewed and considered in rendering this decision.

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. Hardship to the applicant, their children or her in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident 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).

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 lawful permanent resident spouse contends that he will suffer extreme hardship if his spouse is unable to reside in the United States. In a declaration, he explains that due to his wife's inadmissibility, he is suffering the deprivation of her love, affection, companionship and guidance. In addition, the applicant's spouse explains that their children reside in the Philippines with their mother and the lack of family unity is causing him hardship. Alternatively, he explains that were his children to relocate to the United States to live with him, they would suffer extreme hardship due to long-term separation from their mother, their primary caregiver, thereby causing him hardship. Finally, the applicant's spouse explains that his wife is completing her Nursing Degree in the Philippines and would be easily able to find employment in the United States, thereby ameliorating the financial hardship of having to support two households, one in the United States and one in the Philippines. *Affidavit of* [REDACTED] dated May 20, 2008.

In support of the emotional hardship referenced, a forensic psychosocial evaluation has been provided by [REDACTED] concludes that the applicant's spouse is suffering from Major Depressive Disorder and Adjustment Disorder with Mixed Anxiety and Depressed Mood due to long-term separation from his wife and children. *Psychological Evaluation from* [REDACTED] [REDACTED] dated May 9, 2008.

To begin, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the disorders diagnosed by [REDACTED]. 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 psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO notes that the applicant and her children have been separated from the applicant's spouse since September 1999. It has not been established that their separation has caused the applicant's spouse extreme hardship. Finally, it has not been established that the applicant's spouse would be unable to travel to the Philippines, his native country, to visit his wife and children, as he has been doing since departing the Philippines in 1999. 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)).

As for the financial hardship referenced, the record establishes that the applicant's spouse is gainfully employed, earning over \$62,000 per year. *See Form W-2, Wage and Tax Statement for 2007*. It has not been established that with said income, the applicant's spouse is experiencing financial hardship maintaining two households. Alternatively, it has not been established that the applicant specifically is unable to obtain gainful employment in the Philippines.

The AAO recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant. However, his situation, if he 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. The AAO concludes that based on the evidence provided, it has not been established that the applicant's lawful permanent resident spouse will experience extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility.

The applicant's spouse contends that he would experience hardship if he relocated abroad due to long-term separation from his family, including his mother and father who live with him due to numerous medical issues, his brother and sister-in-law, nieces and nephews, his profession as a [REDACTED] and his gainful employment with numerous benefits. The applicant's spouse further asserts that he would not be able to relocate to the Philippines as he would not be able to find gainful employment to maintain his standard of living. *Supra* at 2. Finally, [REDACTED] references the problematic country conditions in the Philippines, including criminal activity, social and political strife and a strong history of violence. *Supra* at 21.

To begin, the record contains no supporting evidence concerning the emotional hardship the applicant's spouse states he will experience due to long-term separation from his relatives. In addition, it has not been established that the applicant's spouse would be unable to obtain gainful employment in the Philippines. Although the record includes evidence that there are no job openings at [REDACTED] it has not been established that the applicant's spouse would be unable to obtain gainful employment with another facility. As for the applicant's parents' medical conditions, no documentation has been provided on appeal establishing his parents' current medical conditions, the short and long-term treatment plan and what hardships they will face were the applicant's spouse specifically to relocate abroad. Alternatively, it has not been established that the applicant's sibling would be unable to assist his parents should the need arise. Finally, with respect to the problematic country conditions in the Philippines, it has not been established that the applicant's spouse would be in danger in the Philippines. The AAO notes that the record establishes that the applicant and their children have been residing in the Philippines without incident.

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 demonstrates that he 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 he 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 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. The waiver application is denied.