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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**



**PUBLIC COPY**

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[Redacted]

FILE: [Redacted] Office: CHICAGO, IL

Date: MAR 09 2011

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the 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, Chicago, Illinois. 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and is the son of U.S. citizen parents, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife, their children, and his parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated October 21, 2008.

On appeal, counsel contends the applicant established the requisite hardship for a waiver and that the field office director failed to consider all of the factors cumulatively. Specifically, counsel contends the applicant's parents have already suffered an extreme loss when their other son, [REDACTED] killed his wife, their son, and himself in a murder-suicide in 2004. In addition, counsel contends the applicant's wife will suffer extreme emotional and financial hardship if the applicant's waiver were denied, particularly considering the couple has two U.S. citizen children. *Brief in Support of Appeal*, dated January 15, 2009.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on May 16, 1995; a letter from the applicant; a letter from [REDACTED]. [REDACTED] a letter from the applicant's parents; a letter from [REDACTED] mother; a letter from the applicant's aunt and uncle; a letter from the applicant's sister; a psychological report for [REDACTED] an article and a death certificate addressing the murders and suicide by [REDACTED]; articles addressing conditions in the Philippines; copies of tax and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that he entered the United States in 1989 using a fraudulent seaman's passport and visa. *Record of Sworn Statement*, dated February 13, 2002. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents and wife are the only qualifying relatives 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.

In this case, the applicant’s wife, [REDACTED] states that she alone will be unable to pay the mortgage if her husband departs the United States. In addition, she states that her husband will not be able to teach and help raise their children and she would be left raising them as a single mother. *Letter from* [REDACTED], dated February 15, 2006.

[REDACTED] mother states that it would be very hard for [REDACTED] to raise her daughters by herself financially, emotionally, intellectually, and spiritually. She states she can help her daughter “[m]aybe

once in awhile," but contends she works the night shift. *Letter from* [REDACTED], dated February 14, 2007.

A psychological report for [REDACTED] states that she was born in the Philippines, but moved to the United States in 1991 and cannot imagine moving back to the Philippines. According to the psychologist, it is not a viable option for [REDACTED] to remain in the United States without her husband. The psychologist contends [REDACTED] would be depressed without her husband and could not handle being a single parent. In addition, the psychologist states that the applicant's absence would be very damaging for the children. Furthermore, the psychologist notes that [REDACTED] talks to her parents on the phone every day and sees them every weekend. She also reported visits with her sisters four times every week and speaks to them daily. If [REDACTED] were to move to the Philippines with her husband, she would also sense a loss of her extremely close family, all of whom live in the United States. The psychologist states that [REDACTED] manifests numerous symptoms associated with anxiety and depression, including intense sadness, sleep disturbance, headaches, anger, obsessive thoughts, constant worry, and appetite change. *Psychological Report*, dated July 12, 2007.

A letter from the applicant's parents state that they would face enormous hardship and unimaginable loneliness if their son is sent home to the Philippines. The applicant's parents state that they live with the applicant's sister, [REDACTED] and her family including her husband and two kids. The applicant's father states that he has seven siblings who live in the United States and the applicant's mother states that she has seven siblings who live in the United States and Canada. *Letter from* [REDACTED], [REDACTED], [REDACTED] and [REDACTED], dated February 13, 2006.

After a careful review of the record, there is insufficient evidence to show that the applicant's wife, mother, or father will suffer extreme hardship as a result of the applicant's waiver being denied.

With respect to the applicant's wife, [REDACTED] if she decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. As stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to a qualifying relative. There is no allegation that either of the couple's children has any physical or mental health issues that would render hardship to [REDACTED] or the applicant's parents. Although the AAO recognizes the difficulties related to being a single parent, the record indicates that the children are currently twelve and fifteen years old, and that [REDACTED] has an extensive support network that includes her parents, siblings, and extended family.

With respect to the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the psychological evaluation in the record is based on three interviews conducted within a single week. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Therefore, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

Regarding the financial hardship claim, there is insufficient evidence to show that any hardship [REDACTED] would experience would be extreme. According to the most recent tax documents in the record, [REDACTED] earned \$36,126 in wages in 2007. *2007 Wage & Tax Statements (Form W-2)*. In addition, [REDACTED] submitted a Form I-864, affirming she would financially support the applicant based on her individual income of \$38,230. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated February 13, 2002. Moreover, aside from documentation showing the couple's monthly mortgage is \$2,457, there is no evidence showing [REDACTED] regular, monthly expenses. Although the AAO does not doubt that [REDACTED] will experience some financial hardship, without more detailed information addressing the couple's total expenses, there is insufficient evidence in the record to conclude that the extent of her financial hardship would be extreme.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if she moved back to the Philippines to be with her husband. Although counsel contends [REDACTED] has "found friends, found a church that she enjoys, and made a place for herself in the community," showing that she is "thoroughly acclimated to life in the United States," *Brief in Support of Appeal* at 10, *supra*, [REDACTED] herself does not address moving back to the Philippines, where she was born and where she attended school, to avoid the hardship of separation and she does not address whether such a move would represent a hardship to her. In any event, aside from letters from family members, the record does not contain any letters from friends, a church, or any other community members to show the extent of her purported integration into American society. Considering all of the evidence in the aggregate, the record does not show that [REDACTED] hardship upon relocating to the Philippines would be extreme or that her situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

With respect to the applicant's parents, the AAO acknowledges the tragedy they have experienced considering that their other son, [REDACTED] was found dead in an apparent murder-suicide. [REDACTED] dated July 23, 2004; *Medical Examiner's - Coroner's Certificate of Death*, [REDACTED], dated August 9, 2004. However, significantly, neither the letter from the applicant's parents, nor any other letter in the record from other relatives, makes any mention of this tragedy. *See, e.g., Letter from [REDACTED], et al., supra; Letter from [REDACTED] dated June 9, 2007* (letter from the applicant's sister); *Letter from [REDACTED] and [REDACTED], dated June 4, 2007* (letter from the applicant's aunt and uncle). Therefore, the AAO has no information upon which to base any conclusion that the applicant's departure from the United States would cause extreme hardship to the applicant's parents despite considering these unique circumstances.

Moreover, the applicant's parents do not address moving back to the Philippines, where they were born, to avoid the hardship of separation and they do not address whether such a move would represent a hardship to them. Although the record shows that the applicant's father is currently sixty-six years old and the applicant's mother is sixty-three years old, there is no allegation either of them has any medical or mental health issues that prevent them from relocating to the Philippines.

The AAO notes that the applicant's parents live with their daughter, [REDACTED]. Although the applicant contends he helps to financially support his parents, the letters from the applicant's parents and from [REDACTED] do not substantiate this claim. *Letter from [REDACTED]; et al., supra; Letter from [REDACTED] supra.* In sum, the evidence in the record does not show that the applicant's parents' hardship would be extreme or that their situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse or parents caused by the applicant's inadmissibility to the United States. 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, 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.