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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090  
U.S. Citizenship  
and Immigration  
Services



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[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CALIFORNIA Date: MAR 29 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 attempting to procure an immigration benefit through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks 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 spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 22, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "failed to adequately establish that a waiver for the alleged fraud was required." *Form I-290B*, filed June 22, 2008. Additionally, counsel claims that "[i]n the alternative this appeal is being filed to establish that [the applicant's husband] would...suffer extreme hardship should the waiver be denied." *Id.*

The record includes, but is not limited to, counsel's briefs; statements from the applicant and her husband; insurance, lease, loan, and tax documents; and an employment verification letter for the applicant's husband. 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 indicates that the applicant married [REDACTED], a United States citizen, on March 23, 2002.<sup>1</sup> In support of a Form I-130 filed by [REDACTED] and an Application to Register Permanent Resident or Adjust Status (Form I-485) filed by the applicant, the applicant submitted her marriage certificate; a visa and Departure Record (Form I-94) establishing that she entered the United States on February 18, 2002, on a B-2 nonimmigrant visa; and a Biographic Information sheet (Form G-325A). The applicant claims that these documents are fraudulent and were filed in an attempt to receive work authorization. On November 10, 2004, the applicant married her current husband, a United States citizen, in California.

In counsel's appeal brief dated July 22, 2008, counsel claims that the "fraud allegedly committed was not willful, nor with the intent to deceive. [The applicant] was unaware of the substantive requirements to receive work authorization or the procedures involved." In a statement dated October 4, 2007, the applicant states that her aunt introduced her to a man named [REDACTED] who was "going to file [her] work permit." She states her aunt asked her if she was "willing to spend \$3000 to \$5000 for [her] work permit." She claims that they met [REDACTED] at a restaurant, he "gave [her] all the documents including the biographic form and the listing of the supporting documents [she] needed to submit, and there is a small green paper card which has a box (square box) on it, and told [her] that [she] need[s] to have [her] signature on it without going out of the box, which is [she] [sic] really remembered that it was his especial [sic] instruction to [her]." The applicant claims that [REDACTED] told her that she could get her work authorization and then she could apply for a green card. She also claims that since she was new to the country, she "thought this is the way it was done." The applicant states [REDACTED] committed the fraud because she did not understand what she was signing or filing, and she "would never file what the person filed had [she] known what he was filing." Counsel states that when they received the applicant's file through a Freedom of Information Act request, "it was revealed that a fraudulent marriage certificate, birth certificate and I-94 were filed in conjunction with her adjustment of status application and without the knowledge of [the applicant]"

The AAO finds counsel's and the applicant's contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO notes that the record establishes that the applicant entered the United States on November 18, 2001, on a B-2 nonimmigrant visa with authorization to remain in the United States until May 17, 2002. It appears that she obtained this visa through official means, i.e., from a U.S. consular officer. Therefore, the fact that she would now assume that she could obtain work authorization and a green card from a man she met in a restaurant and was willing to pay \$3000-\$5000

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<sup>1</sup> The AAO notes that the applicant's marriage certificate was recorded by the Los Angeles county clerk on March 27, 2002, and there is no evidence in the record that the applicant obtained a divorce from [REDACTED].

for his services, supports that she had knowledge that she was not acquiring the work authorization and green card by official means or from a U.S. officer. Other than the applicant's statement, she has submitted no documentary evidence establishing that she had no knowledge that she was filing fraudulent documents in an attempt to obtain a U.S. immigration benefit. 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)). Additionally, the AAO notes that even though the applicant did not understand what she was signing, she signed these documents certifying that the information in the documents was true and correct. Further, when comparing the applicant's signatures from the alleged fraudulent documents to other documents submitted by the applicant, the signatures are very similar. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to obtain a U.S. 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 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 (Board) 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 first prong of the analysis addresses hardship to the applicant’s husband if he relocates to the Philippines. The applicant has not asserted that her husband will endure hardship should he relocate to the Philippines. In the absence of clear assertions from the applicant, the AAO may not speculate regarding challenges her husband will face outside the United States. The applicant bears the burden to show extreme hardship to a qualifying relative in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant’s husband would experience if he joined the applicant in the Philippines, the AAO does not find the applicant to have established that her husband would suffer extreme hardship upon relocation.

In addition, the record does not establish extreme hardship to the applicant’s husband if he remains in the United States. In a statement dated October 4, 2007, the applicant’s husband states “[t]he country that [the applicant] is returnable” is underdeveloped, “considered a third world country,” “[t]he government is not stable,” “violence, crime, poverty are rampant,” “peace and order is poor,” there is high

unemployment, "children are sexually exploited," "[e]nvironmental sanitation is bad," and there are "a lot of communicable diseases." He states it is "too hard for [him] imagining [his] family living with those conditions." The applicant's husband states he is worried about the health of the applicant and his unborn daughter. He states he is "deeply concerned about [the applicant's] condition." He claims that "there are nights that [he] can't sleep," [he] cannot function at work properly" and he is stressed. He also claims that he is having "extreme anxieties." The AAO notes the emotional issues of the applicant's husband.

The applicant's husband states it will not be possible to buy a home, because he "cannot afford it." Counsel claims that the hardship that the applicant's husband "would endure is extreme due to the arrival of his new daughter on October 4, 2007 and all the emotions and hardships that would coincide with raising his new daughter alone." Counsel states the applicant's husband "would have to pay for child care services." The applicant states her husband "will not be able to raise [their] new baby alone and [she] would not want her to have to grow up in the Philippines with [her], when she has a better chance at a good life here with her father." The AAO notes that the record does not contain any documentary evidence that the applicant and her husband have any children.

Counsel states the applicant's husband "is currently on a [diet] dictated by [the applicant] so that he has a better control of his eating habits. Without her assistance [the applicant's husband] is unable to control his eating behaviors and would suffer the consequences thereof, such as diabetes, heart disease and other complications associated with obesity." The AAO notes that the record does not establish through documentary evidence that the applicant's husband requires the assistance of the applicant in managing his diet. Additionally, the AAO notes that no medical documentation has been submitted establishing that the applicant's husband suffers from any medical conditions or the severity of his medical conditions. The AAO notes the claims made by counsel.

The AAO notes that the applicant's husband may suffer some emotional hardship in being separated from the applicant. However, the AAO notes that the record does not establish that his emotional hardships go beyond the typical effects of separation. Additionally, the AAO notes that the applicant's husband may experience some financial hardship in being separated from the applicant. However, other than a 2006 U.S. Individual Income Tax Return, a 2004 California Resident Income Tax Return, 2004 W-2's for the applicant's husband, 2002 and 2003 tax return transcripts, a lease agreement, and an employment verification letter for the applicant's husband, the record offers insufficient proof that the applicant's husband will be unable to support himself in the applicant's absence. Further, the record does not contain documentary evidence that demonstrates the applicant would be unable to obtain employment in the Philippines and, thereby, reduce the financial burden on her husband. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband will suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, 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.