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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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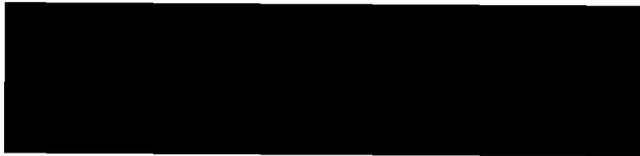


IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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 District Director, Newark, New Jersey. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted, and the prior decisions will be affirmed. The waiver application is denied.

The record reflects that the applicant is a native and citizen of the Philippines who procured entry to the United States in 1991 by presenting a fraudulent passport and U.S. nonimmigrant visa. See *Sworn Statement from Marcelino Rolloque*, dated July 22, 2005. The applicant was thus found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). 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 his U.S. citizen spouse.

The district director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 6, 2006.

On appeal, the AAO concurred with the district director that the applicant committed fraud as contemplated in section 212(a)(6)(C)(i) of the Act, committed misrepresentation as contemplated in that same section, and was therefore inadmissible. The AAO further determined that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *Decision of the AAO* dated April 24, 2009.

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...

On motion, counsel contends that the applicant's misrepresentation was not material and therefore, no fraud was committed. Counsel asserts that the applicant merely misrepresented his identity and

as such, using a false name and therefore misrepresenting his identity was not of a material fact as required for a finding of inadmissibility. *Brief in Support of Motion*, dated May 12, 2009.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). As noted above, the applicant procured a fraudulent passport and nonimmigrant visa by paying an agency \$5,000 and, upon entering the United States, presented the fraudulent documentation to procure entry to the United States. It has not been established, by a preponderance of the evidence, that the applicant did not fraudulently and materially misrepresent himself when he procured entry to the United States with the B-2 visa. Had he admitted at the port of entry his true identity, he would not have been granted entry to the United States as a result of not having a valid visa to enter the United States. Moreover, the applicant's failure to disclose his true identity when presenting a fraudulent document shut off a line of inquiry which was relevant to his eligibility to enter the United States and which would have resulted in a proper determination that he be excluded. As such, based on the evidence in the record, the AAO concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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 U.S. citizen spouse contends that she will suffer emotional and financial hardship were she to remain in the United States while her spouse resides abroad due to his inadmissibility. In a declaration, the applicant's spouse explains that she loves her husband very much and cannot bear to live apart from him. In addition, the applicant's spouse contends that she wants to have a child but long-term separation from her husband would make it difficult for her to conceive. Finally, the applicant's spouse asserts that were her husband to relocate abroad, she would have to support two households, one in the United States and one in the Philippines, and such an arrangement would cause her financial hardship. *Affidavit from* [REDACTED] dated June 3, 2005.

In support of the emotional hardship referenced, a psychological evaluation was provided by [REDACTED] concludes that the applicant's spouse is suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood as a direct result of learning that her husband may have to return to the Philippines. *Affidavit of* [REDACTED] dated July 13, 2006.

With respect to the emotional hardship referenced, 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, conducted almost three years prior to the submission of the instant motion, 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]. In addition, it has not been established that the applicant's spouse would be unable to travel to the Philippines, her native country, to visit her husband. 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 \$87,000 per year. *See Letter from* [REDACTED] [REDACTED] [REDACTED] dated May 17, 2005. It has not been established that with said income, the applicant's spouse would experience financial hardship should she have to maintain 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, her situation, if she 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.

With respect to relocating abroad, counsel asserts that nursing jobs are unavailable in the Philippines and as such, the applicant's spouse would not be able to obtain gainful employment. Counsel further references the problematic economic conditions in the Philippines. Moreover, counsel submits documentation establishing the applicant's spouse's medical conditions and asks that the availability of medical treatment as well as the costs of treatment be considered. *Supra* at 4.

To begin, it has not been established that the applicant's spouse would be unable to obtain gainful employment in the Philippines. Although the record includes articles referencing the difficulties Filipino nurses are facing with respect to obtaining gainful employment in the Philippines, they are general in nature and do not establish that the applicant's spouse specifically would be unable to obtain gainful employment in the Philippines. Nor has it been established that the applicant is unable to obtain gainful employment to support his wife should the need arise. As for the applicant's spouse's medical conditions, including optic neuritis, the possibility of developing multiple sclerosis, rheumatic heart disease, hypothyroidism, and super ventricular tachycardia, no documentation has been provided establishing that the applicant's spouse would be unable to obtain appropriate and affordable medical care in her native country. As noted by the U.S. Department of State, adequate medical care is available in major cities in the Philippines. *Country Specific Information-Philippines, U.S. Department of State*, dated May 11, 2010.

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 she 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 motion to reopen will be granted, and the prior decisions will be affirmed. The waiver application is denied.

**ORDER:** The motion to reopen will be granted, and the prior decisions will be affirmed. The waiver application is denied.