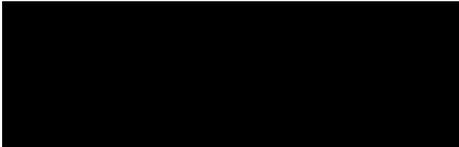


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



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**



H5

DATE: **APR 04 2012**

OFFICE: MANILA

FILE:

IN RE: Applicant:

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 Officer-in-Charge, Manila, the Philippines, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and motion to reconsider. The motion is granted, the previous decision affirmed, and the waiver application denied.

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 having procured admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to qualify for an immigrant visa to live in the United States.

The officer-in-charge concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Officer-in-Charge* dated March 9, 2007. On appeal, the AAO found that, while the applicant had established a qualifying relative would suffer extreme hardship by virtue of separation from the applicant, he had failed to show that extreme hardship would be imposed on a qualifying relative who relocated to the Philippines to reside with the applicant. *Decision of the AAO* dated January 7, 2010. The applicant's counsel has moved for the AAO to reopen and reconsider the dismissal, which we do only regarding the issue of extreme hardship due to a qualifying relative's relocation.

In support of the motion, the applicant's counsel submits a brief and asserts that USCIS did not consider all evidence submitted or failed to give proper weight to the evidence. The record consists of the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [...].

The record shows that the applicant sought to procure an immigrant visa through fraud or misrepresentation during consular processing for an immigrant visa in early 2005. The applicant's counsel establishes that in three interviews at U.S. Embassy Manila -- on January 5, March 15, and April 20, 2005 -- the applicant indicated to U.S. government officials that he had never been married and, when confronted with proof of marriage, revised his position to say the marriage had been annulled, but that he had not brought proof of the annulment. During the March 15 embassy visit at which the applicant produced the previously unavailable annulment document, upon referral to the consulate's anti-fraud unit, the applicant admitted under oath that: he was married in a 1999 civil ceremony, the marriage had not been terminated, the annulment document was fake, and he willfully and knowingly claimed to be single in order to qualify for a visa as the unmarried son of a lawful permanent resident. As the applicant's later claims of ignorance regarding these admissions are contradicted by the record, we find that he is inadmissible and, therefore, needs a waiver of the inadmissibility in order to qualify for a visa.

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 lawful U.S. resident mother is the 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.

Previously, the AAO concluded that the applicant had established his mother would suffer extreme hardship if she remains in the United States while her son resides abroad due to his inadmissibility because of the emotional and psychological hardship she was experiencing and the potential physical effects that could result from her psychological condition.

As regards establishing extreme hardship in the event a qualifying relative relocates abroad based on the denial of the applicant’s waiver request, the record reflects that the applicant is a citizen and resident of the Philippines, where his mother was born several hours north of Manila in Pampanga Province and from which she emigrated to the United States in 1994 at the age of 45. Now 61, she lives and shares expenses with an adult daughter in a Los Angeles, California suburb. Other family ties to the United States include two U.S. citizen parents, seven U.S. citizen siblings, and a grandchild. The qualifying relative also has four siblings remaining in the Philippines. A self-employed day care provider since 2003, she reported income of approximately \$2700 for 2006.

According to her 2007 Psychological Evaluation, she spends most of her money helping the applicant. The record shows that, from October 2008 through February 2009, she made three remittances totaling \$800 to the applicant in the Philippines.

The applicant's mother states that her brothers and sisters in the Philippines are unemployed and living in the town where she was born. Although she asserts that their lack of work makes them unable to help her find a job, the record is otherwise silent as to why they could not help her job search, as well as regarding the general employment situation in the region. Also lacking is any information regarding her educational background, job qualifications, or work history prior to leaving the Philippines. While stating that the applicant has been unemployed since 1999, she does not indicate his job before that time or his job prospects. The record shows that the qualifying relative's income was about three per cent of her household's income in 2006, as her daughter and son-in-law contributed over \$87,000. While the qualifying relative's 2010 statement claims the son-in-law has departed the home, there is no documentation to support her assertion that it would be financially burdensome for her daughter to help support her in the Philippines: absent from the record is any earnings evidence for her or her daughter, as well as evidence of living expenses in California or expected living expenses in the Philippines.

Finally, the record does not show the qualifying relative's medical conditions – high blood pressure, insomnia, depression -- to be untreatable or likely to worsen if she moves back to the Philippines. There is little evidence of her medical conditions, and documentation on the record establishes that medical care is generally adequate there. To the extent that the applicant's mother's medical issues stem from anxiety about separation from the applicant, reuniting mother and son would help alleviate the problems by removing their cause. Also lacking is evidence that safety concerns attributed to the applicant's mother are warranted. Counsel cites a 2006 travel warning addressed to U.S. citizens that notes the risk of threats to Westerners. The current travel warning is similarly directed to U.S. citizens, contains general information about the threat of terrorist activities against public gatherings, indicates that non-Filipinos are the usual subjects of targeted violence, and specifically warns against travel only to the southern parts of the country. *Travel Warning—Philippines*, January 5, 2012. The record does not establish that the applicant's mother, a non-U.S. citizen native of the Philippines, would be in any specific danger based on the information discussed in the travel warnings.

While not unmindful that returning to her birth country would entail challenges, we note that the documentation in the record, considered in its totality, reflects that the applicant has not established that his mother would suffer hardship that is extreme were she to move back to the Philippines, where she lived until 1994. Therefore, the AAO concludes the applicant has provided insufficient evidence to show that a qualifying relative would suffer extreme hardship if she relocated abroad to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother 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 an

adult child is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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 prior decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The prior decision of the AAO is affirmed. The waiver application is denied.