



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

Date: Office: SAN FRANCISCO, CA

FILE: [REDACTED]

DEC 08 2012

IN RE: [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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision, dated November 5, 2010, the field office director found that on September 20, 2002, the applicant had filed an Alien Relative Petition (Form I-130) and Application to Register Permanent Residence or Adjust Status (Form I-485) based on a fraudulent marriage certificate. The field office director then found that the applicant had not established that her U.S. citizen spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

In a Notice of Appeal to the AAO (Form I-290B), dated November 19, 2010, counsel asserts that the applicant did not make a willful misrepresentation because she was not aware that the petition being filed on her behalf was based on a fraudulent marriage certificate or was even a spousal petition. Counsel states further that the field office director's decision was flawed in its balancing of the equities in the applicant's case and that the applicant has established that her spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

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

- (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.

The record indicates that on September 30, 2002, the applicant submitted a Form I-130, Form I-485, and supporting documentation based on her being married to a U.S. citizen, [REDACTED]. The record does not contain an Application for Work Authorization (Form I-765) from 2002. Counsel states that the applicant was a victim of a man who filed Form I-130s and Form I-485s on behalf of immigrants that were based on fraudulent marriage certificates. Counsel submits numerous news articles which state that between 2001 and 2003 a man in Southern California filed spousal petitions for immigrants that were based on fraudulent marriage certificates. Counsel states that the applicant was not aware that a spousal petition was being filed on her behalf, that she was never married to [REDACTED] and that the signatures on the applicant's filings from 2002 were forged.

The applicant states that she hired an immigration consultant to obtain work authorization for her in the United States. She states that she was not aware that the man doing the filings for her was submitting an application based on a fraudulent marriage to a U.S. citizen. She states further that

numerous answers on the petitions filed in 2002 are incorrect and that it is not her signature on these petitions. She states that she was not aware of the fraudulent filings until she received a notice to attend an adjustment interview. She then states that she “went over her files” and realized how “messed up” her papers were. This claim is inconsistent with the applicant’s claim that she was unaware of the paperwork being filed on her behalf until she received the answer to her Freedom of Information Act Request. The record also indicates that after the applicant received her interview notice and realized the problems with her filings, she still attended a medical exam, but then did fail to appear for her interview. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

We find that the record establishes that the applicant was not married to a [REDACTED] and that the record indicates that the marriage certificate in the record showing the applicant was married to a [REDACTED] on June 18, 2002 in Los Angeles County, California is fraudulent. The record includes a certification from the Los Angeles County Registrar stating that they have no marriage record for a [REDACTED] born on [REDACTED] 1960. However, based on the current record, we cannot find that the applicant was unaware of the fraudulent filings being done on her behalf and that she was not a willful participant in the filings. Contrary to counsel’s assertions that the applicant’s signatures on the Form I-485 and G-325A that were filed in September 2002 were forged, we find that the signature on the applicant’s Form I-485 is extremely similar to the signatures on the applicant’s current Report of Medical Examination (Form I-693) and on her Filipino passport, where she also signed her name as [REDACTED].¹ Furthermore, the applicant has not submitted any objective documentary evidence that her petitions were being handled by the man convicted of filing fraudulent immigration petitions and as indicated above the applicant’s statements regarding her documents and what information she had regarding filings done on her behalf are inconsistent. Finally, although the record indicates that the applicant was not married to a [REDACTED] the record does contain a birth certificate for a Jeff Belen, that has not been shown to be fraudulent, and would indicate that a [REDACTED] does exist. The AAO notes that the petitioner who submitted a fraudulent I-130 on her behalf, [REDACTED] shares the same last name as the applicant’s first husband.

Unlike a removal hearing in which the government bears the burden of establishing a respondent’s removability, the burden of proof in the present proceedings is on the applicant to establish her admissibility for admission to the United States “to the satisfaction of the Attorney General [Secretary of Homeland Security].” See Section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the applicant has not met her burden in establishing that she was not aware of and was not a willful participant in the misrepresentation being made. Thus, the AAO finds that the applicant

¹ The record indicates that the applicant was married to a [REDACTED] in the Philippines. The record does not indicate when this marriage began, but does indicate that the marriage was dissolved in California on [REDACTED] 2007.

willfully misrepresented being married to a U.S. citizen in an attempt to procure an immigration benefit under the Act.²

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

- (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 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 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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

² This case is distinguishable from a case involving marriage fraud under Section 204(c) because the record does not indicate that the applicant ever entered into a marriage for the sole purpose of immigration, but only submitted fraudulent documentation that she was married to a U.S. citizen.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record of hardship includes: counsel’s brief, two statements from the applicant, a statement from the applicant’s spouse, a psychological evaluation for the applicant’s spouse, other medical documentation, financial documentation, letters from the applicant’s spouse’s employer, and country conditions documentation.

Counsel is claiming that the applicant’s spouse will suffer extreme emotional and financial hardship as a result of separating from the applicant. Counsel states that the applicant’s spouse is experiencing extreme despair, soreness, sleeplessness, loss of appetite, headaches, fluctuating blood pressure, and is having problems focusing at work. Counsel also states that the applicant’s spouse will suffer financially as a result of separation because his position has been changed and his hours reduced at his employment causing him to be unable to pay all of his expenses on his salary. The record indicates that the possibility of being separated from the applicant is causing the applicant’s spouse depression and anxiety, but the record fails to provide details or documentation regarding the severity of these conditions and how they are affecting his daily life.

We find that the record fails to show that the applicant's spouse would suffer extreme emotional hardship as a result of separation. We recognize that the applicant's spouse would experience emotional distress as a result of separation, but the record fails to show that he would experience hardship beyond what others in the same situation would experience. Thus, the AAO finds that the applicant has not shown that her spouse will suffer extreme emotional hardship as a result of separation.

In addition, we do not find that the record supports the statements made regarding the applicant's spouse suffering extreme hardship as a result of relocation. Counsel claims that the applicant and her spouse will not be able to find employment in the Philippines because of their age and they will lose their medical insurance as a result of the relocation. We note that the record also establishes that the applicant has two adult children and her mother in the Philippines. She states that her daughter is opening a business and her son is a trainee at a lung center. Furthermore, the country conditions information submitted for the Philippines does not indicate that the applicant and/or her spouse would be unable to find employment in the Philippines, that they would not receive support from family members living in the Philippines, and that they would not have access to medical care in the Philippines. Thus, the AAO finds that the applicant has not shown that her spouse would suffer extreme hardship as a result of relocation.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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(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.