



**U.S. Citizenship
and Immigration
Services**

115

DATE: **DEC 08 2012** OFFICE: LAS VEGAS, NEVADA

FILE: [REDACTED]

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:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal line extending to the right.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Las Vegas, Nevada, 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 having procured entry to the United States through willful misrepresentation.¹ The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated March 28, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application as the applicant's spouse would suffer extreme hardship as defined in caselaw. *See Notice of Appeal or Motion* (Form I-290B), dated April 20, 2011.

The record includes, but is not limited to: briefs and correspondence from counsel; letters of support; identity, psychological, medical, employment, and financial documents; photographs; and documents on conditions in the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

¹ The record indicates that during a consular interview to obtain a visa for herself and an individual identified as her biological child, the applicant indicated that the registration of the individual's birth was fraudulent and that the individual is neither her biological nor adopted child. Accordingly, the applicant could be subject to the inadmissibility provisions under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided another alien to try to enter the United States in violation of the law. Although the applicability of this inadmissibility ground may have bearing on the applicant's eligibility for future immigration benefits, the AAO will not reach a discussion on the merits of this issue as the appeal will be dismissed for the reasons stated herein.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having procured admission as a B-2 Visitor to the United States on November 6, 1999, by presenting a visa and Filipino passport that did not belong to her. The record supports the finding, and the AAO concurs that the misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 demonstrated qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 BIA 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 BIA 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 BIA 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 Id.* at 568; *In re 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-I-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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 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.

Counsel also contends that the U.S. Ninth Circuit Court of Appeals, in *Prapavat v. Immigration and Naturalization Service*, 638 F.2d 87, 89 (9th Cir. 1980) (*reh'g granted*), "admonishes the adjudicator to look to the improbability that the waiver applicant could immigrate to the United States legally in any other way," and in so doing with the matter on appeal, USCIS should consider that the applicant does not have any "other way to immigrate to the United States unless she receives approval of an I-601 waiver." *Brief in Support of Appeal*, dated May 18, 2011. The AAO finds counsel's assertion unpersuasive as the cited case is distinguishable from the particular circumstances on appeal: the cited case concerns individuals seeking relief through suspension of deportation, for which the primary issue involved hardship to their U.S. citizen child, aggravated by the fact that it would be virtually impossible for them to ever immigrate to the United States from Thailand.

Counsel contends that the applicant's spouse would suffer extreme emotional, medical, and financial hardship in the applicant's absence as the applicant's spouse has struggled with and continues to suffer from a variety of psychological and physical conditions for which he has been recommended various treatments, including the applicant's presence, and the applicant would be able to contribute to their household income upon the issuance of work authorization. The applicant also states that she is brought to tears when she thinks about what will happen to her spouse if she returns to the Philippines and they are "worlds apart from each other", and it would be difficult for her spouse to cover all of their debts by himself as it would be improbable for her to find employment in the Philippines. The applicant's spouse further states that: he may have to lose the one, most important person in his life, just when he has finally "figured out" some things and is at ease with himself and his family; he never wanted to get married until he met the applicant because she is willing to accept him for who he is; the applicant makes him want to be a "better man"; the applicant changed his life so that he has dreams and goals again; he constantly worries about the applicant's immigration matters, which he fears will affect his work as he has sleepless nights; he and the applicant have moved to an apartment and their savings has been depleted since the applicant lost her employment authorization; they could budget shared expenses if the applicant were to remain in the United States, rather than double their expenses by maintaining households in two countries; and he can barely handle their bills with only his income as their monthly expenses exceed their current net income.

Although the applicant's spouse may experience hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. Dr. [REDACTED] Ph.D., FAABM, FABMP, FAAS, indicates that the applicant's spouse scored in the severe range for anger, agitation, anxiety, and depression, and that the applicant's spouse reports hypoactive sexual desire and symptoms of restless leg. *See Initial Diagnostic Evaluation*, dated April 1, 2010. Dr. [REDACTED] also indicates that the applicant's spouse suffers from several medical conditions, which require medications and treatment, including the possibility of diabetes, and that he suffers from post-traumatic amnesia, cognitive problems, back pain, eye problems, and nose bleeds as the possible result of a previous motor vehicle accident. *Id.* Dr. [REDACTED] further recommended that the applicant remain in the United States as her spouse's "situational stress" is exacerbating his medical conditions, and that the spouse undergo: individual cognitive behavioral psychotherapy with consideration of psychotropic medications; follow-up with neurological, ENT, and ophthalmological evaluations; and lab tests to determine whether he has diabetes. *Id.* Additionally, Dr. [REDACTED] indicates that the applicant's spouse may need a neuropsychological evaluation and neurocognitive rehabilitation as well as pain management if spinal surgery were required. *Id.*

The AAO finds that the record does not include sufficient evidence of the applicant's medical conditions and the treatment that he has received for those conditions other than what has been self-reported to Dr. [REDACTED]. Moreover, the record does not include any recent medical or mental health evaluations as recommended by Dr. [REDACTED] after his initial observation of the applicant's spouse. Absent an explanation in plain language from the treating physician and mental health professional of the nature and severity of any condition and a description of any treatment or family assistance

needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed. Additionally, the record does not include any specific evidence of the motor vehicle accident referenced in Dr. [REDACTED] initial evaluation. 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)).

Further, the record is sufficient to establish that the applicant's spouse is the sole breadwinner and is currently employed by [REDACTED]. However, the record does not include any specific evidence of the applicant and her spouse's financial obligations, other than their residential lease, automobile note, life insurance, and what the spouse self-reported. Thereby, the record does not show that the applicant's spouse would be unable to support himself in the applicant's absence. Accordingly, the AAO cannot conclude that the record establishes that the spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's emotional, medical, and financial hardship, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse would suffer extreme hardship upon relocating to the Philippines as: he has lived his entire life in the United States; he does not have any family ties outside the United States, and makes frequent trips to his family in the United States; his family connection is essential to combat his low self-esteem and depression; he lacks ties to the Philippines; the Philippines is mired in poverty, corruption, and violence; his yearly income in the United States far exceeds the per capita income in the Philippines; he would lose his generous employment-based benefits package; he unsuccessfully inquired about employment opportunities in the Philippines; and he continues to suffer from medical and psychological conditions. The applicant indicates that: she and her spouse would not have family in the Philippines to help them as her family members reside in the United States as citizens or lawful permanent residents; they would be unable to find jobs at their ages; and they would not have her spouse's medical benefits, which pays for her medicines, vision, and dental visits. The applicant's spouse indicates that he would have a difficult time adjusting to life in the Philippines as: he does not speak the native language or know the customs; the weather would be a shock to him; he would not feel safe and secure given the violence there; and he would be unable to afford the medical expenses related to his and the applicant's healthcare.

The record is sufficient to establish that the applicant's spouse would suffer hardship if he were to relocate to the Philippines. The record reflects that he has resided his entire life in the United States, maintains close ties to his family members, is steadily employed, and receives his medical insurance through his employment. And, although the record does not include recent medical and psychological evaluations or documentation of the applicant's spouse's efforts to obtain employment in the Philippines, the AAO finds that, in the aggregate, the applicant's spouse would suffer extreme hardship as a result of relocation to the Philippines to be with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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 appeal will be dismissed.

ORDER: The appeal is dismissed.