



U.S. Citizenship
and Immigration
Services

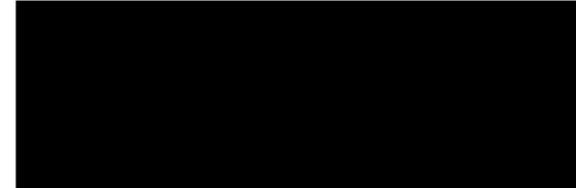


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Office: NEWARK, NJ

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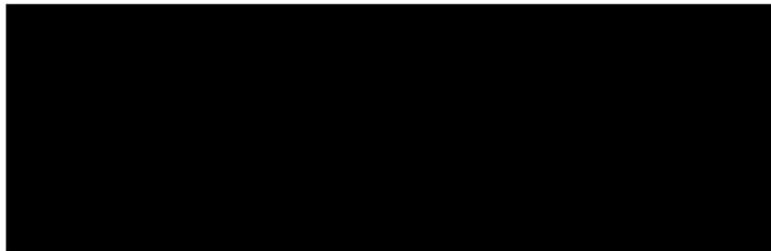


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will remain 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 procuring entry into the United States by willful misrepresentation of a material fact. The AAO also found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of his last departure from the United States. The record indicates that 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 seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, in order to reside in the United States with his spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on his qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated October 22, 2007. The AAO also found that the applicant had not established that denial of his waiver application would cause extreme hardship to his spouse and dismissed the appeal accordingly. *See AAO's Decision*, dated June 1, 2011.

On motion, counsel asserts that the AAO failed to consider all relevant hardship evidence in the aggregate. *See Form I-290B, Notice of Appeal or Motion*, dated June 29, 2011. Counsel further asserts that the AAO "largely disregarded" the evidence of emotional hardship and "significantly downplayed" severing of family ties. *See Counsel's Brief*, dated June 30, 2011. Counsel also submits new evidence for consideration.

A motion to reopen must state the new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel's motion meets these requirements, and therefore the motion is granted.

The record includes, but is not limited to: briefs from the applicant's counsel, an affidavit from the applicant's spouse, financial evidence, a psychological evaluation for the applicant's spouse, and country-conditions information for the Philippines. The entire record was reviewed and considered in rendering this decision on the motion.

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.

Section 212(i) of the Act provides that:

- (1) 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.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record reflects that on three occasions in 1999, 2002, and 2003, the applicant procured entry into the United States by presenting a fraudulently obtained passport and a non-immigrant visa under an assumed name. The AAO concluded that the applicant accumulated unlawful presence in the United States from April 1999 through September 23, 2002 and his departure from the United States on September 23, 2002 triggered the ten-year bar under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

A waiver of inadmissibility under sections (212)(i) and 212(a)(9)(B)(v) 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). In the instant case, the applicant's spouse is his qualifying relative.

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, 631-32 (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, “[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 *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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On motion, counsel states that if the applicant’s spouse relocates, she would “more likely than not” be unable to find “comparable work in the Philippines,” and relocating would mean she would have to leave behind “her mother, her career, and her financial security.” Counsel also asserts that the applicant’s spouse’s life expectancy would be reduced by four years if she lives in the Philippines. Counsel states that remaining in the United States would cause the applicant’s spouse extreme hardship, because the applicant’s inadmissibility for misrepresentation is permanent and he would be unable to return even for visits. Counsel states that the high cost of travel and maintaining two separate households also would cause the applicant’s spouse financial hardship. Counsel further asserts that the applicant’s spouse’s “ongoing clinical depression” would likely “worsen” if the applicant is removed. On motion, counsel submits country-conditions information for the Philippines as additional evidence to be considered.

Having reviewed the evidence in the record and considered counsel's assertions on motion, the AAO concludes that the applicant has failed to demonstrate that his spouse would experience extreme hardship if she separates from him. With respect to financial hardship, the AAO in its decision dated June 1, 2011, concluded that the record lacked evidence demonstrating the applicant's financial contribution to the household income and detailed information about the family's expenses. Without such documents, it was not possible to conclude that the applicant's spouse would experience financial hardship if the applicant were in the Philippines. On motion, the applicant has not submitted evidence to support claims that his spouse would experience financial hardship if he were in the Philippines. We further note that the income information for the applicant's spouse is from 2004 and the record contains no recent household income evidence. Counsel's assertions without supporting documents regarding the financial burden that would result from separation are insufficient to establish hardship. Without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regarding the applicant's spouse's emotional hardship, we acknowledge that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, counsel on motion asserts that the applicant's spouse "would face extreme difficulties due to her ongoing clinical depression." The record, however, contains no evidence about the applicant's spouse's current psychological condition. On motion, the applicant has not submitted any evidence to support claims that his spouse continues to experience emotional hardship. In the absence of current medical or psychological evaluations or other objective reports to corroborate counsel's claims, the record does not establish that the applicant's spouse has "ongoing clinical depression" and is therefore experiencing emotional hardship. The AAO concludes, considering the evidence of hardship in the aggregate, that the applicant has failed to establish that his spouse would experience extreme hardship if she were to remain in the United States.

The AAO finds that the applicant also failed to demonstrate extreme hardship to his spouse if she relocates to the Philippines. We note that the applicant's spouse is from the Philippines and speaks the language. The country-conditions evidence, although informative, in and of itself does not establish extreme hardship, and the record lacks other evidence to demonstrate that the applicant's spouse would be unable to obtain employment in the Philippines. With respect to concerns regarding the applicant's spouse's family and community ties in the United States, the AAO notes that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The AAO concludes that considering the evidence in the aggregate, the record does not establish that the applicant's spouse would experience extreme hardship, should she relocate.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of establishing that the application merits approval 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 waiver application remains denied.

ORDER: The motion is granted and the waiver application remains denied.