



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: Office: NEWARK, NJ [REDACTED]

DEC 21 2012

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his United States citizen spouse and parents.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated August 2, 2011.

On appeal, the applicant through counsel asserts that his spouse would suffer extreme hardship if he were not granted a waiver of inadmissibility.

The record contains but is not limited to, counsel's brief, statements from the applicant, the applicant's spouse and other family members, medical reports, financial records, as well as various immigration applications and decisions. 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) 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.

In the present case, the record indicates that during an interview for adjustment of status the applicant testified under oath that in 1999 he purchased a fraudulent birth certificate and documents purporting business ownership under the assumed name of [REDACTED]. The applicant then used those documents to procure a Filipino passport and United States visa. The applicant entered the United States using the same passport and visa on August 11, 1999. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i). The record supports this finding, and the AAO concurs in the applicant's inadmissibility under 212(a)(6)(C)(i) of the Act. The applicant through his counsel contests his inadmissibility.

Counsel asserts that the applicant's presentation of fraudulent documents in order to obtain a visa for admission to the United States was not a material misrepresentation. However, as stated the AAO concurs in the Field Office Director's finding of inadmissibility under 212(a)(6)(C)(i) of the

Act. The applicant indicated under oath that he knew he was obtaining and presenting fraudulent documents with a false identity, and did so for the purpose of obtaining a United States visa. The applicant did not only obtain a false birth certificate to prove identity, but also purchased documents purporting business ownership in order to demonstrate significant ties to the Philippines when applying for a United States visa. The applicant then used that visa for admission to the United States and did not tender this information until questioned during an interview for adjustment of status by a government official more than a decade later. The applicant was therefore determined to be inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of material facts in order to obtain a visa and admission into the United States based on his actions of submitting false information about himself when applying for immigration benefits. The AAO concurs in this finding. The applicant willfully misrepresented material facts about his identity and employment history, and he has not shown that he would have been admitted based on the true facts. He is inadmissible under section 212(a)(6)(C)(i) of the Act and he requires a waiver under section 212(i) of the Act.

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

- (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the 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 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 applicant's spouse indicates that the applicant has become a major source of her emotional support after suffering through a prior abusive marriage. The applicant's spouse indicated that she is dependent on the applicant for many of her everyday needs such as psychological and financial

support because of the trauma she lived through with her first husband. The applicant's spouse also stated that she would find it difficult to live in the Philippines because of the inadequate health care and the probable struggles to obtain viable employment. The applicant's spouse indicates that she is currently suffering from several medical ailments such as hypertension, diabetes and asthma which would be exacerbated by stress if the applicant were required to live in the Philippines without her. The applicant's spouse also indicates that if she remained in the United States and the applicant returned to the Philippines she would have to support two households, because the applicant would also have difficulty finding employment due to the economic conditions in the country. The applicant's spouse further indicated that they wanted to start a family and would be unable to do so if they had to live apart. In support of these assertions the applicant has presented a forensic psychosocial psychiatric evaluation from [REDACTED]. See *Forensic Psychosocial Psychiatric Evaluation from [REDACTED] dated June 11, 2011.* [REDACTED] provides an assessment indicating that the applicant's spouse has suffered Posttraumatic Stress Disorder and a separation from the applicant would cause further depression and anxiety, as well as exacerbate her medical issues.

The applicant and his U.S.citizen parents also provided statements which indicate that the applicant assists them with their medical and financial needs and it would be difficult for them to live comfortably if the applicant were prohibited from residing in the United States. The applicant submitted a letter from [REDACTED] in support of his parents' medical needs. See *letter from [REDACTED] dated June 7, 2011.* The applicant further indicated that he continuously offers his support and assistance to his spouse, parents and children and it would be difficult to do so if he could not remain in the United States.

The applicant has not demonstrated that relocation would cause extreme hardship for his spouse. Although it was indicated that the applicant's spouse is suffering from numerous physical and mental conditions, there were no continuous records provided regarding courses of treatment for these issues in order to make a determination that a disruption or change based on relocation to the Phillipines would cause her extreme hardship. In addition, while there is no intention to diminish the breadth of information provided in the evaluation from [REDACTED], it is noted that the evaluation was conducted via telephone with the interested parties and consisted of information provided solely for the present proceeding. There were no further evaluations conducted according to the report, and nothing in the record indicates that the applicant's spouse sought any prior or post evaluation or treatment for psychosocial conditions. *Id.* The qualifying spouse was also born in the Phillipines, and if she chose to relocate with the applicant would be familiar with the customs and culture of the country allowing for an easier re-integration. Moreover, although country conditions indicate there may be some challenges if residing in certain areas of the Phillipines, there is insufficient evidence in the record to demonstrate that any possible difficulties faced within either the applicant's or his spouse's birthplaces would rise to a level of extreme hardship.

The applicant also has not demonstrated that separation would cause extreme hardship to the qualifying spouse. The applicant's spouse indicates that she does not want to live separately from the applicant because it would be very stressful to live apart and they would like to begin a family.

However, nothing has been provided in the record to demonstrate that they have embarked on any attempts to begin a family during the course of their marriage or whether the various health issues indicated would play any significant role in this decision apart from the applicant's inadmissibility. In addition, although the applicant's spouse stated that it would be stressful were she to live separately from the applicant, there has been insufficient evidence to demonstrate that these difficulties would be different from those issues which would be expected when a close loved one is found to be inadmissible to the United States.

Moreover, although the applicant's spouse also indicated she is currently suffering from several physical medical conditions which would be exacerbated by either separation or relocation, there were no substantive physical medical evaluations submitted to support these assertions.

In addition, while the applicant also offered assertions regarding other caretaker responsibilities such as tending to his U. S. citizen parents and their medical needs indicating extreme hardship to them jointly if there was separation due to his inadmissibility, there was insufficient evidence provided to support these statements. The applicant submitted a letter from his parents' doctor in corroboration of these statements, however, the letter merely indicates their general medical conditions and the inception dates of treatment. *See letter from* [REDACTED] dated June 7, 2011. There was no documentary information submitted beyond this material to establish that the applicant was so vital to the needs of his parents that his departure from the United States would cause extreme hardship. It must also be noted that the applicant has at least two siblings currently living within the United States and yet no evidence was provided establishing why they would be unable to assist with their parents' care. While it is understandable that because of the applicant's profession as a nurse and standing in the family as the oldest sibling it may be preferable to have him assist his parents, it has not been shown that his inadmissibility would cause more than the normal challenges expected under these circumstances. The applicant has two siblings and there was no information offered as to their availability or professions which might assist in assessing the hardship to his parents were he required to return to the Philippines and they remained in the United States.

The applicant has, however, provided sufficient explanation and documentation to demonstrate that relocation would cause extreme hardship to his U.S. citizen parents. The applicant's parents are of an advanced age and are both suffering from numerous medical ailments such as, diabetes, hypertension and high cholesterol for which they are receiving regular medication and treatment in the United States. Relocation to the Philippines at this time in order to be with the applicant would cause a disruption in their course of care. The applicant has established that they would face economic challenges which would further impact their ability to obtain care in the Philippines. The record sufficiently supports that they would encounter challenges in reacclimating to conditions in the Philippines after a lengthy residence in the United States. Considered in the aggregate, together with the common challenges of relocating to another country due to the inadmissibility of a loved one, the AAO finds that the applicant's parents would endure extreme hardship should they join the applicant abroad.

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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to his qualifying relatives due to separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case. 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.