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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: OFFICE: SAN FRANCISCO, CA

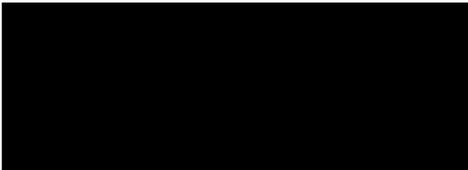
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IN RE: **FEB 13 2012**

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)

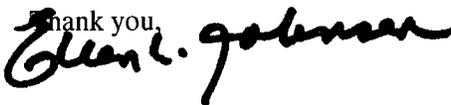
ON BEHALF OF APPLICANT:



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 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 has resided in the United States since March 2, 2000, when she was admitted to the United States pursuant to her B-1/B-2 nonimmigrant visa. An employer later filed a Form ETA 750, Application for Alien Labor Certification, and a Form I-140, Petition for Alien Worker, on her behalf, and the applicant admitted she knew the employer had no intention to hire her. The applicant 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 sought to procure a benefit provided under the Act through fraud or misrepresentation. The applicant is the spouse and daughter of lawful permanent residents and is seeking derivative status as the spouse of a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident spouse.

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 January 29, 2010.

On appeal, counsel for the applicant submits a brief in support of appeal, a supplemental declaration from the applicant, copies of her qualifications, a copy of her certified Form ETA-750, and some background information on miscarriages. In the brief, counsel contends the applicant is not inadmissible under section 212(a)(6)(C) because the I-140 and ETA 750 petitioner, not her, made representations on those forms, she was qualified for the position, and she intended to work for the petitioner once her Form I-485 application was approved. Counsel asserts even if the applicant remains inadmissible, she has made a sufficient showing of extreme hardship to her lawful permanent resident spouse and parents.

The record includes, but is not limited to, the documents listed above, a brief in support of the Form I-601 waiver, evidence of birth, marriage, residence, and citizenship, other applications and petitions filed on behalf of the applicant, statements from the applicant, her spouse, and her parents, letters from physicians and a licensed marriage and family therapist, medical records, letters from family, friends, and employers, correspondence from the applicant, evidence of income and expenses, copies of U.S. Federal Income Tax Returns, educational documents, evidence related to the family's involvement with the U.S. Tennis Association, and evidence of country 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) 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:

- (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.

Counsel indicates the applicant could not have committed fraud or willful misrepresentation with respect to the Form ETA-750, Foreign Labor Certification, or Form I-140, Immigrant Petition for Alien Worker, as both are the employer's duty, not the alien's, to prepare, sign, and file. The record reflects, however, that the applicant in fact signed the Form ETA 750, stating: "Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct." *Form ETA-750, Application for Alien Employment Certification*, signed April 12, 2001. Furthermore, on the ETA-750 the applicant stated she was actually working as an accountant with the petitioner, [REDACTED] since January 2000. This statement, made under oath, is contradicted by the applicant's later admission that she never worked for Myriads.

Counsel's assertion that the applicant fully intended to accept [REDACTED] offer, and that [REDACTED] intention does not matter for purposes of this waiver is not persuasive. The applicant signed a sworn statement in affidavit form regarding her "fraudulent I-140 petition" in which she declares: "I physically met [REDACTED] and told him that I had a company that could petition for me but was not going to employ me. The company was willing to help petition since the owner is a friend. [REDACTED] requested for my school transcript to what kind of job I could fit into. [REDACTED] said I could pass as an accountant." *Record of sworn statement in affidavit form*, January 26, 2009. This statement shows not only did the petitioning employer have no intention to hire the applicant, but also that the applicant was aware there was no genuine offer of employment. Therefore, the applicant could not possess the intent to accept a job offer which she knew was nonexistent. In light of her sworn statement, the applicant's later assertion that she was in fact offered a permanent job as an accountant by [REDACTED] in 2000 is unpersuasive. With respect to the applicant's H-1B status, the applicant's sworn statement that she knew there was no job with [REDACTED] before the ETA-750 was filed in April 2001 is later contradicted by her September 30, 2009 declaration, where she claims she was aware there was no employment with [REDACTED] after obtaining H-1B status, which occurred in July 2001.

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure a benefit under the Act through fraud or misrepresentation.<sup>1</sup> The applicant's qualifying relative is her lawful permanent resident spouse.

Counsel and the applicant assert that [REDACTED] is her mother, and [REDACTED] is her step-father and are therefore qualifying relatives for purposes of a waiver under section 212(i) of the Act. The record reflects that the applicant was abandoned by her natural parents when she was approximately 3 weeks old. [REDACTED] explains a church official then gave her the applicant, and that [REDACTED] then filed a Certificate of Foundling with the government. Despite counsel's assertions to the contrary, there is no evidence of record to show that [REDACTED] then legally adopted the applicant, or otherwise formalized her parental status under the laws of the Philippines, which is required to establish a qualifying relationship as defined in sections 101(b)(1) and 101(b)(2) of the Act. The record similarly lacks evidence to show that [REDACTED] is also a legally a parent under the Act. Without sufficient evidence regarding the parental relationships, the AAO cannot consider [REDACTED] as qualifying relatives for purposes of a waiver under section 212(i) of the Act.

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. 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 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,

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<sup>1</sup> The applicant may be similarly inadmissible due to statements made on the Form I-129, Petition for a Nonimmigrant Worker.

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.

The applicant’s spouse contends he experiences emotional and financial hardship given the applicant’s inadmissibility. The spouse indicates his financial obligations are payments on a \$440,000 mortgage for his condo, condominium association dues, credit card debt, and other household expenses. Copies of billing statements are submitted as evidence of expenses. The applicant’s spouse contends he is able to meet those financial obligations only with the applicant’s assistance. Paystubs are submitted to show the applicant makes \$3142.02 a month as her net salary, and the applicant’s spouse earns \$2,997.62 after taxes. The spouse asserts without the applicant’s income, he would be unable to pay the bills and would consequently have no choice but to file for bankruptcy. If the applicant moved to the Philippines without him, the spouse adds he would have to additional financial burden of supporting her. If both of them relocated to the

Philippines, the applicant claims not only would he be unable to find a comparable job, given his job history in the Philippines, he would have to bear a significant drop in his standard of living, and he would be unable to save for retirement as he is able to do in the United States.

The applicant's spouse discusses his emotional hardship, claiming he is totally dependent on the applicant given that she is his only family in the United States, that they have been together since 1993, and that he does not have many friends. The spouse adds that even in his major social activity outside work, playing tennis, he is also joined by the applicant. An evaluation by [REDACTED] a licensed marriage and family therapist, indicates the applicant's spouse meets the criteria for dependent personality disorder, and that he is currently experiencing some stress and anxiety due to the applicant's immigration situation. The spouse further states that if he were to relocate to the Philippines with the applicant, he would suffer additional emotional difficulties because he would have to leave his life here, his home, his job, his retirement and health benefits, and his lawful permanent resident status which he worked hard to obtain. Additionally, the spouse explains he would have to give up playing tennis because playing tennis is unaffordable in the Philippines, and there is no league like the United States Tennis League, of which he and the applicant are members, in the Philippines.

Counsel contends the applicant's spouse would relocate to an area in the Philippines which was affected by natural disasters, further indicating that dismissing evidence of natural disasters in an analysis of extreme hardship is erroneous in light of the TPS status given to Haitians because of their country's difficulties.

The applicant has provided sufficient evidence of financial hardship to her spouse upon separation. The spouse's assertion that household expenses and other financial obligations are not met by his income alone is supported by evidence of record which includes paystubs, letters from employers, billing statements, and documents on mortgage payments.

The AAO considers several factors in a determination of extreme hardship, including country conditions. Counsel's assertion that country conditions due to natural disasters in the Philippines are similar to those in Haiti, however, is without merit. The Attorney General has determined that an 18-month re-designation of Temporary Protected Status (TPS) for Haiti is warranted because the country meets the requirements set forth in section 244(a) of the Act. No such designation has been made for the Philippines, and there is insufficient evidence to show the applicant's spouse would have to relocate to an area which continues to experience significant adverse impact of natural disasters.

The applicant's spouse contends he has some dependence and anxiety issues which would be exacerbated upon separation from the applicant. Yet, as stated in the field office director's decision, the record reflects that the applicant and his spouse have already experienced lengthy periods of separation since their marriage in 2002. It is noted that the record still lacks evidence on how the applicant's spouse handled those previous separations, especially given his assertions on emotional hardship with respect to this waiver application.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress commonly created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without her spouse.

Though the applicant's spouse claims he will experience extreme hardship upon relocation to the Philippines, the record reflects the spouse is a native and citizen of the Philippines, that he has spent a significant portion of his life there, and by his own admission that he has no family ties in the United States. Furthermore, there is insufficient evidence to show the family will be unable to access adequate medical facilities for childbirth in the Philippines. Additionally, the applicant's employment history in the Philippines demonstrates that she has been able to find gainful employment in that country, and as such may be able to support the household. Although the applicant's spouse may experience some financial and emotional hardships upon relocation to the Philippines, the AAO finds there is insufficient evidence to establish the impacts of relocation on the applicant's spouse, when viewed in the aggregate, are above and beyond those commonly experienced by relatives of inadmissible aliens. As such, the AAO cannot conclude the applicant's spouse would experience extreme hardship if he relocated to the Philippines with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 lawful permanent resident 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.