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



U.S. Citizenship
and Immigration
Services



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DATE **FEB 14 2012** Office: LOS ANGELES, CALIFORNIA

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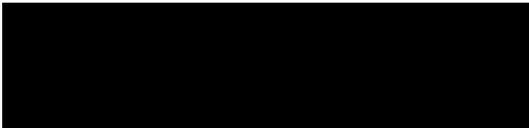
IN RE:

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 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 District Director, Los Angeles, California. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decisions of the district director and AAO will be affirmed.

The applicant is a native and a citizen of the Philippines who used presented a passport with an assumed name to enter the United States. The applicant 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 1, 2006. The AAO found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the appeal. *AAO Decision*, dated April 9, 2009. The AAO dismissed the appeal accordingly.

On motion, the applicant's spouse asserts that the applicant is not inadmissible under section 212(a)(6)(C) and has submitted additional evidence in support of extreme hardship. *Form I-290B*, received May 12, 2009.

The record contains, but is not limited to, the following evidence: a brief from counsel; statements from the applicant and the applicant's spouse; and documents initially filed in support of her Form I-601. On motion the applicant submits: a copy of the applicant's spouse's birth certificate; a copy of the applicant's mother's naturalization certificate; a copy of the 2008 Human Rights Report: Philippines, published by the Bureau of Democracy, Human Rights and Labor, February 25, 2009; a copy of the Travel Warning for the Philippines, dated January 27, 2009; an accounting statement estimating costs of living in the Philippines, dated April 27, 2009; a copy of a 2008 tax return for the applicant and her spouse; a Psychological Evaluation by [REDACTED], dated May 7, 2009; a copy of the annual retirement benefits statement for the applicant's spouse; and statements from the applicant's spouse and daughter.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states 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 chapter is inadmissible.

The record indicates that the applicant presented a passport with an assumed name when entering the United States in 2002. The district director concluded that that the applicant had entered the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Counsel asserts on motion that the applicant's entry into the United States using a passport with an assumed name does not constitute misrepresentation under section 212(a)(6)(C)(i) because the applicant was issued a birth certificate with a name of [REDACTED]. However, the record contains a birth certificate in the name of the applicant which suggests that, contrary to counsel's assertion, that her true name was not unavailable. The record also contains a signed statement from the applicant in which she admits that she entered the United States under an assumed name. 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). In this case, the applicant has not submitted any such evidence. Therefore, the AAO finds that the applicant made a material misrepresentation in procuring a B-2 visa and admission to the US, and as such the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 or her children 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 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.

On motion, counsel submits additional evidence in support of the assertions that the applicant's spouse would experience extreme hardship upon relocation. Previous counsel asserted previously, inter alia, that the applicant's spouse would be unable to find employment, support his spouse in the Philippines, would lose his retirement benefits and would not have access to adequate medical facilities for potential medical conditions.

The Acting Chief's decision reviewed the evidence in the record and provided a reasoned explanation as to why the applicant had failed to establish the applicant's spouse would experience extreme hardship upon relocation. The additional evidence on appeal includes country conditions materials, statements by a CPA and an employment recruiter, and a retirement package statement.

The applicant's spouse has also submitted a statement. He asserts that he needs to keep making contributions to his retirement until the age of 62 in order to have a "decent retirement" and that he has experienced a near total hearing loss in his left ear, a condition he will need assistance in coping with physically. *Statement of the Applicant's Spouse*, dated May 16th, 2009. He states that he will not have money to pay medical bills in the Philippines.

The record does not contain any probative medical documentation to establish the applicant's spouse's has had a loss of hearing or any impact it has had on his ability to function on a daily basis. Nor is there evidence that the applicant would be unable to find treatment for any such condition in the Philippines or such medical treatment would be unaffordable. Without evidence to establish that the applicant's spouse has been diagnosed with a hearing condition the AAO cannot give any weight to the assertion that he would suffer a hardship impact based on that condition.

Further, although the record contains a copy of a retirement package statement for the applicant's spouse, that document does not establish that the applicant's spouse would lose access to his retirement benefits in the event of relocation to the Philippines.

The country conditions materials that have been submitted includes the 2008 Human Rights Report and a May 7, 2009, Travel Warning for the Philippines. The Human Rights Report discusses national statistics on human rights practices, and the Travel Warning discusses the risks of travel to the southern Philippine islands of Mindanao and Sulu archipelagos. The AAO notes that the U.S. Department of States, Bureau of Consular Affairs, issued an updated Travel Warning for the Philippines on January 5, 2012 which states, in part, "The Department of State warns U.S. citizens of the risks of terrorist activity in the Philippines. While most of the recent incidents of terror have occurred on the island of Mindanao and in the Sulu Archipelago, U.S. citizens are reminded that terrorist attacks could be indiscriminate and could occur in any area of the country, including Manila." Counsel does not indicate that the applicant and her spouse would reside Mindanao and Sulu Archipelagos. However, the AAO acknowledges that applicant's spouse's concerns regarding conditions in the Philippines.

The record contains a statement from [REDACTED] stating that the applicant would have difficulty finding sufficient employment to maintain his standard of living. The AAO acknowledges that relocation would result in the loss of the applicant's spouse's employment in the United States, and the record indicates that the applicant's spouse would have difficulty securing employment in the Philippines.

As noted above the applicant's spouse was born and raised in the United States and is unfamiliar with the language, culture or security conditions present in the Philippines. In addition, he has worked a long stable career with the state of California and the record reflects that he would have difficulty finding employment in the Philippines. When these factors are considered in the aggregate in light of the additional evidence submitted, the AAO can determine that the applicant's spouse may experience uncommon hardships upon relocation. Therefore, the AAO finds that the applicant's spouse would experience extreme hardship were he to relocate to the Philippines.

Counsel for the applicant also asserts on motion, as previously asserted by prior counsel, that the applicant's spouse will experience extreme emotional, financial and physical hardship upon separation. The AAO has considered the evidence previously submitted and found that it did not establish extreme hardship upon separation. On motion, counsel has submitted a psychological evaluation by [REDACTED], M.S., C.H., Ph.D., narrates the applicant's spouse's background as he relayed it to her and diagnoses the applicant with Major Depressive Disorder. She concludes that it would be an extreme hardship for the applicant's spouse if the applicant were not allowed to remain in the United States. While expert testimony is welcomed in these proceedings, the AAO notes that [REDACTED] report is based on one interview with the applicant's spouse and appears to be based on the self-reporting of the applicant's spouse. Therefore, the AAO finds that the report is insufficient to distinguish the emotional hardship on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens. Based on these observations the AAO does not find the record to establish that the applicant's spouse will experience emotional hardship which rise above the norm for relatives of inadmissible aliens who remain in the United States.

Although the record indicates that the applicant's spouse may experience some hardship, there is insufficient evidence to establish that the hardship will rise to the level of extreme. Even when the hardships asserted on separation are examined in the aggregate, they fail to establish that the applicant's spouse will experience hardships which rise above the norm to a degree constituting extreme hardship.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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 from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.