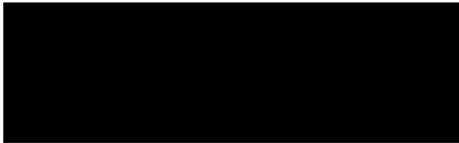


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

DATE: **FEB 21 2012** Office: CHICAGO, IL

FILE:

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:

SELF-REPRESENTED

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 Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Philippines who used a passport and visa containing a false name and birthdate in an attempt 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). He is the spouse of a Lawful Permanent Resident. 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 Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 8, 2009.

On appeal, the applicant asserts that the Field Office Director erred in finding the applicant inadmissible due to misrepresentation, applied the wrong legal standard to the applicant's waiver and erred in not finding the record to establish extreme hardship to the applicant's spouse due to the applicant's inadmissibility. *Form I-290B*, received August 6, 2009.¹

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 and visa a false name and birthdate in order to enter the United States in July, 1993.

The record includes, but is not limited to, the following evidence: a brief from counsel; financial records for the applicant and his spouse, including tax returns and pay stubs; copies of a residential mortgage and deed; country conditions materials on the Philippines; a copy of a home sales chart for Midlothian, Illinois; copies of mental health records for the applicant's spouse's son; and photographs of the applicant, his spouse and their children.

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

¹ Although the record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from Manny Aguja, the AAO will consider the applicant to be self-represented as [REDACTED] has been expelled from practicing before the Department of Homeland Security.

Prior counsel asserted that the applicant is not inadmissible because he timely retracted his misrepresentation at the first opportunity. He asserts that "a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility." *Brief in Support of Appeal*, received August 6, 2009.

Under the doctrine of timely retraction or recantation, an applicant can assert that they timely retracted a misrepresentation. The effect of a timely retraction is that the misrepresentation is eliminated. *See Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960)(also cited by *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999). For the retraction to be effective, it has to be voluntary and without delay (timely). *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973), referring to *Matter of M-*, 9 I&N Dec. 118 (BIA 1960) and *Llanos-Senarrillos v. United States*, 177 F.2d 164 (9th Cir. 1949). The alien must correct his or her testimony voluntarily before the conclusion of the proceeding at which he or she gave the false testimony and before being exposed by the adjudicator or government official. *Id.*

In this case the applicant did not retract or recant his misrepresentation because he did not reveal it until many years later during an adjustment interview and only after being questioned by an inspection official. *See Matter of Llanos-Senarillos v. United States*, 177 F.2d 164 (9th Cir. 1949). As such, the AAO finds the record to establish that the applicant is inadmissible under 212(a)(6)(C)(i) due to having misrepresented his identity.

Prior counsel further asserted that the USCIS should apply the law as it was written at the time of the applicant's misrepresentation in 1993, and that it would be an impermissible retroactive application of 212(a)(6)(C)(i) to the applicant's 1993 conduct, as that conduct predated the effective date of the misrepresentation provision found at section 212(a)(6)(C)(i). However, the BIA held in *Cervantes-Gonzalez, supra*, that a request for an INA § 212(i) waiver of the Act is a request for prospective relief and, as such, its restrictions may be applied to conduct which predates passage of the current statute. Here, the instant Form I-601 was filed in August 2006, and as such, the current provisions of section 212(i) will apply to these proceedings.

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 stepchild can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the 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.

Prior counsel asserted on appeal that the applicant's spouse would experience emotional, physical and financial hardship upon relocation. *Brief in Support of Appeal*, received August 6, 2009. Prior counsel asserted that the applicant's spouse would be unable to find employment in the Philippines, unable to afford health care insurance and would lose her life savings and leave behind significant debt if she had to sell her home in order to relocate. Prior counsel further asserted that the applicant's son has serious mental health issues, is completely dependent on the applicant's spouse and that the applicant's spouse's son would not have access to adequate mental health care facilities upon relocation to the Philippines with the applicant's spouse.

The record includes country conditions materials on the Philippines, including the most recent consular information page. The record also includes medical records for the applicant's spouse's son, who has been diagnosed with schizoaffective disorder. While the country conditions materials submitted establish that the Philippines may have a lower quality of living than the United States, and that it may not have educational or health facilities rising to the level of the United States, this is not sufficient to establish extreme hardship. Most aliens who relocate abroad will experience some degree of financial impact or lower standard of living. *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); *see also Matter of Ige*, 20 I&N 880 (BIA 1994)(noting most countries would not have the economic, educational, and medical facilities and opportunities available in the United States). In this case, the AAO notes that the applicant's spouse is from the Philippines, and would be familiar with its language, customs and security situations. The AAO will give some consideration, however, to the length of time of the applicant's spouse's residence in the United States when aggregating the impacts upon relocation.

The medical records establish that the applicant's son has a serious mental health condition and that the applicant's spouse has to take care of him even though he is an adult. The country conditions materials submitted do not establish healthcare for the applicant's spouse's son would be unavailable in the Philippines, but the AAO acknowledges that relocation would disrupt the continuity of care received by the doctors who are familiar with his history and prescription regime. When considered in conjunction with the normal impacts of relocation, such as cultural readjustment, residential

relocation and re-employment, the impact on the applicant's spouse of having to relocate a dependent child with mental health issues rises above the common impacts of relocation to a degree that they would indirectly impact the applicant's spouse.

When the hardships upon relocation are considered in the aggregate they rise above the common impacts experienced by the relatives of inadmissible aliens who relocate abroad with their spouses to a degree constituting extreme hardship. Although the record establishes that a qualifying relative would experience extreme hardship upon relocation, it must still be established that a qualifying relative would experience extreme hardship upon separation.

With regard to hardship upon separation, counsel for the applicant asserts the applicant's spouse will experience emotional and financial hardships due to the applicant's inadmissibility. *Brief in Support of Appeal*, received August 6, 2009. Counsel observes that the applicant's spouse has accumulated significant debt, that she would experience emotional impact due to the applicant's removal and that the applicant's presence has allowed the applicant's spouse to devote her time and energy to care for her sick son.

With regard to the financial impact of departure, the record contains some evidence of debt owed by the applicant's spouse, including a car loan and home mortgage. However, these documents are not sufficiently probative to establish the degree and severity of any financial hardship. While the record contains employment documentation for both the applicant and his spouse, there is insufficient evidence to establish that the income earned by the applicant's spouse, \$65,627 annually according to her 2008 tax return, would be insufficient to cover her financial obligations.

Counsel has asserted that the applicant's spouse will experience emotional hardship due to the applicant's inadmissibility. The AAO recognizes that the applicant's spouse's son has a serious mental health condition. However, the record does not establish that the applicant's spouse would be unable to care for her son in the applicant's absence. The record does not reflect that the applicant has provided physical or financial assistance in caring for the applicant's spouse's son. Nor does the record reflect that the emotional hardship the applicant's spouse might experience as a result of separation from the applicant goes beyond that which would normally be experienced by family members of inadmissible aliens.

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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.