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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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DATE: **JAN 03 2012** OFFICE: CHICAGO

FILE: [REDACTED]

IN RE: [REDACTED]

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:

[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,

Perry Rhew

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 record reflects that the applicant is a native and citizen of the Philippines who received a P-1 non-immigrant visa for entry to the United States by presenting a passport that falsely identified the applicant as [REDACTED] to conceal the fact that the applicant was the beneficiary of an immigrant visa petition submitted by his father.¹ Based on the applicant's attempt to procure entry to the United States on November 18, 1994 by presenting a fraudulently obtained P-1 visa, the Field Office Director found the applicant 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 attempted to procure entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States. The applicant is a beneficiary of an approved Special Immigrant Petition, as a religious worker, who seeks a waiver of inadmissibility in order to reside in the United States and take care of his U.S. citizen mother.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 30, 2009.

On appeal, counsel for the applicant asserts that in accordance with the Religious Freedom Restoration Act (RFRA), the applicant's waiver application should be granted to protect the religious exercise of the applicant and the Society of the Divine Work (SVD). Counsel further asserts that the applicant's mother will suffer extreme financial and emotional hardship if the applicant returns to the Philippines.

In support of the waiver application and appeal, the applicant submitted an affidavit from his religious order, background information concerning the Roman Catholic church and the applicant's duties as a church pastor, affidavits from the applicant and his family, telephone bills and travel documents, medical documentation for the applicant's mother, family photographs, background information concerning country conditions in the Philippines, and photographs and documents concerning the applicant's vocation. 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.

¹ The Field Office Director also states that the applicant's P-1 visa fictitiously listed him as being employed by or otherwise associated with [REDACTED]. The applicant indicates that he did briefly work for this employer after entering the United States, but there is no documentation on the record to support this assertion.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 (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 assert that denial of the applicant's application for a waiver of inadmissibility will burden the religious exercise of SVD or the applicant, as contemplated by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1, and asserts that the U.S. government is prohibited from substantially burdening the exercise of religion unless it has a compelling interest. *Brief in Support of Appeal* at 1-2. Counsel asserts that the U.S. government must make an exception to rules of general applicability in individual cases to avoid substantially burdening a person's exercise of religion.² As noted by the Field Office Director, the SVD provides missionary assistance in approximately sixty countries and deportation from the United States would not inhibit the applicant's ability to provide secular and spiritual guidance in furtherance of the church's doctrine in other areas of the world. *See Decision of Field Office Director*, dated June 30, 2009. Further, there is no indication that the instant decision will curtail the SVD's ability to make employment decisions based upon its religious preferences, as the applicant would not be precluded from serving his religious order outside the United States. Therefore, the applicant has not established that denial of the waiver application would substantially burden the free exercise of his religion.

² Counsel relies on 42 U.S.C. § 2000bb-1, which provides:

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person -

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

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.

The applicant's qualifying relative in this case is his U.S. citizen mother. The record contains references to hardship the applicant's sister, his parish in Chicago, Illinois, or the SVD would experience if the waiver application were denied. It is noted that Congress did not include hardship to these individuals as a factor to be considered in assessing extreme hardship. In the present case, the applicant's mother is the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to other individuals will not be separately considered, except as they may affect the applicant's mother.

In the present case, the record reflects that the applicant is a [REDACTED] year-old native and citizen of the Philippines who has been residing in the United States since November 18, 1994. The applicant's spouse is a [REDACTED] year-old native of the Philippines and citizen of the United States. The applicant is currently residing in Chicago, Illinois, and the applicant's mother is currently residing in Salem, Oregon.

The applicant's mother asserts that she needs her son to remain in the United States because she relies on him even though they live apart. See *Affidavit of [REDACTED]* dated August 24, 2009. According to the applicant's mother, she feels the closest to the applicant of all her children and she relies on him for attentiveness, spiritual guidance, and the financial assistance he provides to their family. *Id.* The applicant's mother also states that she would not be able to visit her son in the Philippines because she could not afford it. *Id.* The applicant submitted telephone records and plane tickets to indicate calls and trips made to and from Oregon. See *T-Mobile Records; Working Assets Business Long Distance; Southwest.com Ticketless Confirmation*, dated August 10, 2009; *Delta.com Passenger Receipt*, dated July 26, 2005. The applicant's sister states that she needs the applicant to follow up with her to ensure that she is getting their mother proper medical attention. See *Affidavit of [REDACTED]* dated August 24, 2009. It is noted that there is no medical report in the record detailing the exact nature and severity of any conditions suffered by the applicant's mother and a description of any treatment or family assistance required.

The applicant's mother resides in Oregon with the applicant's sister and her family and the applicant resides in Illinois. See *Affidavit of [REDACTED]* dated August 24, 2009. The applicant's mother is currently employed; she works in a nursing home and receives free lodging and food in addition to her pay. See *Affidavit of [REDACTED]* dated August 24, 2009. The applicant's mother notes that due to her work and her negative relationship with her son-in-law, she frequently spends much of her time at the nursing home. See *Affidavit of [REDACTED]* dated August 24, 2009. There is no financial documentation in the record to support the applicant's mother's assertions that she could not afford to visit her son if he returned

to the Philippines. Further, the applicant's mother states that she earns enough through her employment to regularly send money to the Philippines. *Affidavit of* [REDACTED] dated August 24, 2009. It is acknowledged that separation from a child nearly always creates a level of hardship for both parties, but there is no indication that if the applicant departs from the United States, the emotional hardship suffered by the applicant's mother will impact her continued ability to perform in her work and daily life. There is insufficient evidence in the record to find that the applicant's mother will suffer a level of emotional hardship beyond the common results of inadmissibility or removal if the applicant returns to the Philippines.

The applicant's mother states that she needs her son in the United States because of the financial assistance he provides for the family. *See Affidavit of* [REDACTED] dated August 24, 2009. In the applicant's mother's original affidavit, she indicates that the applicant sent her money regularly after he left the Philippines. *See Affidavit of* [REDACTED] dated February 20, 2006. However, the record reflects that the applicant no longer provides financial assistance to his mother. In her more recent affidavit, the applicant's mother indicates that the applicant sends money to his brothers in the Philippines. *See Affidavit of* [REDACTED] dated August 24, 2009. The applicant, in listing his monthly budget, indicates that he sends money to his brothers and cousin, and the record contains receipts of money transfers from the applicant to relatives in the Philippines. *See Affidavit of* [REDACTED], dated August 26, 2009. It is noted that the applicant's brothers and cousin are not qualifying relatives in the context of this application and any hardship they would suffer will only be considered insofar as it affects the applicant's mother. Further, the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's mother asserts that she cannot relocate to the Philippines because she has not been there since immigrating to the United States and life is hard there. *See Affidavit of* [REDACTED] [REDACTED] dated February 20, 2006. The applicant's mother further states that her family is settled in the United States and that one of her sons is in the process of immigrating to the United States. *Id.* It is noted that the applicant's mother is a [REDACTED] year-old native of the Philippines who immigrated to the United States in December 1998, so that she spent fifty-four years of her life in the Philippines. *See Affidavit from* [REDACTED] dated August 24, 2009. Further, the applicant's mother states that she requires assistance because of her limited English skills. *Id.* It is also noted that the applicant's most recent affidavit states that he provides money to his two brothers in the Philippines, one with a family including five children. *See Affidavit of* [REDACTED] [REDACTED] dated August 26, 2009. Accordingly, the applicant's mother has family members currently living in both the United States and the Philippines. Additionally, the applicant states that his mother owns a house in the Philippines, though he states that it is in need of repairs. *Id.* The record contains insufficient evidence to find that the applicant's mother would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to the Philippines.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 his U.S. citizen mother as required under section 212(a)(9)(B)(v) 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(a)(9)(B)(v) 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.