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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: **JAN 06 2012** Office: SAN FRANCISCO, CA 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:



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 District Director, San Francisco, California. The Administrative Appeals Office (AAO) dismissed the applicant's appeal of that decision on March 3, 2009. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision affirmed and the waiver application denied.

The applicant is a native and citizen of the Philippines, who 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 using a fraudulent passport in order to procure a non-immigrant visa to the United States, and for entering the United States with the fraudulent document on March 26, 1989. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). 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 family.

In a decision dated March 28, 2006, the District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated March 28, 2006. Thereafter, the applicant appealed the District Director's decision, and the AAO dismissed the appeal on March 3, 2009.

In the motion to reopen, the applicant's attorney submitted a letter from the qualifying spouse, which detailed his hardships. In his letter, the qualifying spouse asserts that he will encounter medical, financial and emotional hardships. The qualifying spouse also indicates that his sons would experience "educational disruption" and his wife's parents, who live in the United States, would also be devastated, if the applicant were to return to the Philippines. Further, the qualifying spouse indicates that neither he nor the applicant would be able to get jobs in the Philippines due to age discrimination.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), a brief submitted by counsel on appeal, statements from the applicant and her spouse, a letter from the applicant's landlord, documentation of the qualifying spouse and applicant's expenses, the applicant's grade report and tuition statement for her nursing program, a letter from a doctor regarding one of the applicant and qualifying spouse's children and a medical document indicating his vaccination history, Form I-130 and documentation submitted with the Application to Adjust Status (Form I-485). In the applicant's motion to reopen, counsel provided additional documents including a letter from the qualifying spouse, medical documentation regarding the qualifying spouse and internet pages regarding available job opportunities in the Philippines. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's husband 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-Moralez*, 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.

In the present case, the record reflects that the applicant submitted fraudulent passport in order to obtain a non-immigrant visa and thereafter entered the United States using the fraudulent document on March 26, 1989. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for obtaining a visa and entry into the United States through fraud or misrepresentation.

The applicant’s qualifying relative is her husband, who is a United States citizen. The documentation provided that specifically relates to the qualifying parent’s hardship includes Form I-601, Form I-290B, a letter from the qualifying spouse, medical documentation regarding the qualifying spouse, internet pages regarding available job opportunities in the Philippines, a brief submitted by counsel on appeal, statements from the applicant and her spouse, a letter from the applicant’s landlord, documentation of the qualifying spouse and applicant’s expenses, a letter from a doctor regarding one of the applicant and qualifying spouse’s children and documentation submitted with Form I-485. The entire record was reviewed and considered in rendering this decision.

As previously stated, the qualifying spouse asserts that he will encounter medical, financial and emotional hardships upon his separation from the qualifying spouse. The qualifying spouse also

indicates that his sons would experience “educational disruption” and his wife’s parents, who live in the United States, would also be devastated, if the applicant were to return to the Philippines. Further, the qualifying spouse indicates that neither he nor the applicant would be able to get jobs in the Philippines due to age discrimination.

The AAO concluded in our prior decision that the applicant failed to sufficiently establish that the qualifying spouse would suffer extreme hardship as a result of his separation from the applicant. With regard to the potential hardship to the qualifying spouse, the AAO indicated that the applicant failed to provide any evidence to demonstrate that she would be unable to find a job if she were to return to the Philippines in order to assist in raising money for her family. The record contained evidence that the applicant was enrolled in vocational school for either nursing or some other health care related field.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. The evidence submitted includes a statement from the applicant’s husband, medical records for the applicant’s husband, and internet pages regarding available job opportunities in the Philippines. It is not clear whether the information and evidence submitted was previously available or could have been discovered or presented in the previous proceeding. Nevertheless the AAO will reopen the proceedings and consider the documentation submitted in support of the motion to reopen.

In support of the motion to reopen, the applicant provided various internet listings for available positions in the Philippines in the hotel industry and as a maintenance engineer, with each job requiring specific education levels and a maximum age ranging from the mid-twenties to mid-thirties. However, the internet printouts did not relate to the applicant’s current or related fields and do not address the entire job market in the Philippines. Further, the applicant’s husband states that he was the sole provider for the family until recently, when the economic downturn made it necessary for the applicant to work outside the home to help support the family. No evidence was submitted to support this assertion, such as updated income tax returns and other evidence of the applicant and her spouse’s employment and income or of the family’s expenses. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

With regard to the qualifying spouse’s potential emotional hardships, the record contains statements from the applicant and the qualifying spouse and a letter from the qualifying spouse. Of the documentation in the record, the only evidence provided in the motion was the letter from the qualifying spouse. The letter from the qualifying spouse fails to reference any new emotional issues that were not previously discussed in the prior statements by the applicant and the qualifying spouse. As such, the applicant again failed to distinguish the qualifying spouse’s situation, if he remains in the United States, from that of other individuals separated as a result of removal.

Lastly, the qualifying spouse notes in his letter that he is suffering from various medical issues including anal fistula requiring surgery, which occurred nine years ago; vertigo, which he has suffered “in the past years”; and other pains caused by Sciatica. In support of these assertions, the applicant submitted copies of computer printouts with records of doctor visits made by the qualifying spouse. The printouts consist of laboratory results and physician’s notes for medical care in 2007 and 2008. The evidence on the record is insufficient to establish, however, the severity of any conditions suffered by the qualifying spouse. Further, the documents submitted do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any current condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The AAO recognizes that the applicant’s spouse will experience hardship as a result of separation from the applicant. However, the applicant has failed to provide sufficient evidence to demonstrate that any medical, financial or emotional hardships the qualifying spouse would experience would constitute hardship beyond the common results of removal or inadmissibility.

The AAO previously found that, when considered in the aggregate, the evidence of record establishes that the qualifying spouse would suffer extreme hardship in the event that he relocated to the Philippines. The qualifying spouse has lived in the United States for over twenty years, and his children live in the United States. The record contains documentation also demonstrating that the qualifying spouse would face financial and medical hardships if he were to relocate to the Philippines, as well as potential safety concerns as a United States citizen. Moreover, the applicant demonstrated that his children rely upon health insurance for their medical issues and the AAO acknowledged that one of the children’s medical issues may pose stress on the qualifying spouse if he were to relocate to the Philippines. As such, the AAO affirms the prior conclusion that the qualifying spouse would experience extreme hardship if he relocated to the Philippines to accompany 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. 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.

Furthermore, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to

reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden.

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.

ORDER: The motion will be granted, the previous decision affirmed and the waiver application denied.