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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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#5

Date: JAN 09 2012 Office: FRESNO, CALIFORNIA

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 Field Office Director, Fresno, California, 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 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), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the mother of a United States citizen stepson. She is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) and a 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 reside in the United States with her husband and stepson.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 2, 2009.

On appeal, the applicant, through counsel, claims that the applicant's husband and stepson will suffer extreme hardship if the applicant's waiver application is denied. *See counsel's appeal brief*, dated March 5, 2009.

The record includes, but is not limited to, counsel's appeal brief, a declaration from the applicant's husband, a psychological evaluation on the applicant's husband and stepson, tax documents, the applicant's marriage certificate, and country conditions documents on the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record indicates that on September 11, 1999, the applicant entered the United States by presenting a fraudulent passport and visa. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 stepson can be considered only insofar as it results in hardship to a qualifying relative. 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 United States Citizenship and Immigration Service (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 of Immigration Appeals (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 a psychological evaluation dated February 21, 2009, [REDACTED] states the applicant’s husband and son would suffer extreme hardship in the Philippines. Counsel states the applicant’s husband has lived his entire life in the United States. In a declaration dated September 13, 2008, the applicant’s husband states he is very close to his family in the United States, including his minor son. [REDACTED] reports that the applicant’s husband has custody of his son after divorcing his first wife. [REDACTED] states “[i]t is unlikely that [the applicant’s husband] could adjust to being away from his brother and his mother,” and he would “be devastated to be away from all his extended family.” Counsel states the applicant’s husband has no ties to the Philippines, he does not speak the native language, and it will be difficult to assimilate into the Philippine community. Additionally, counsel claims it would be difficult for the applicant’s husband to find employment in the Philippines. The applicant’s husband states the Philippines “is an underdeveloped country,” where “[d]ebt, poverty and unemployment are fundamental problems.” Counsel states that if the applicant’s stepson joins the applicant in the Philippines, “he would be giving up his life in the U.S., a life where his education is guaranteed, where his health and safety is safeguarded and his future is promising.” The AAO notes the claims made regarding the difficulties the applicant’s husband would face in relocating to the Philippines.

The applicant’s husband states he has “contemplated moving to the Philippines...but [he] [is] afraid because [he] [is] aware of various incidents of security risks and threats of terrorist actions.” The AAO notes that in a travel warning issued on June 14, 2011, the U.S. Department of State warns United States citizens of the dangers of traveling to the Philippines. The U.S. Department of State reports that “[k]idnap-for-ransom gangs are active throughout the Philippines and have targeted foreigners. U.S.

citizens traveling, living, and working throughout the Philippines are urged to exercise heightened caution in public gathering places. U.S. citizens should exercise caution when traveling in the vicinity of demonstrations since they can turn confrontational and possibly escalate to violence.” *U.S. Department of State, Travel Warning – The Philippines*, dated June 14, 2011. Additionally, the U.S. Department of State notes that it “remains concerned about the continuing threat of terrorist actions and violence against U.S. citizens and interests throughout the world.” The AAO notes the general safety issues in the Philippines.

The AAO acknowledges that the applicant’s husband is a native and citizen of the United States and that he may experience some hardship in relocating to the Philippines. Based on the record as a whole including the applicant’s spouse’s lack of ties to the Philippines and his lack of language skills which will affect his ability to work and settle into Philippine society, the security concerns in the Philippines, his separation from his family, and having to raise his son in the Philippines, the AAO finds that the applicant’s husband would suffer extreme hardship if he were to relocate to the Philippines to be with the applicant.

However, the record does not establish extreme hardship to the applicant’s husband if he remains in the United States. [REDACTED] states the applicant’s husband and son would suffer extreme hardship if they are separated from the applicant. [REDACTED] claims that if the applicant’s husband is separated from the applicant, it will “result in much behavioral difficulty for [the applicant’s husband],” which may result “in an Intermittent Explosive Disorder.” Counsel states the applicant’s husband “has had a history of past emotional and psychological problems related with his anger management issues. [The applicant] has been and continues to be a source of support which has helped [the applicant’s husband] from relapsing back to his old condition.” The applicant’s husband states he will “suffer extreme hardship and difficulty to be left alone without [the applicant].” He claims that “[j]ust thinking about a possible separation makes [him] unable to sleep, develop extreme anxieties, and renders [him] already unable to function well.” The AAO notes the mental health concerns of the applicant’s husband.

The applicant’s husband states the applicant helps him take care of his son. Counsel states the applicant’s husband is raising his son “with the help and support of [the applicant].” He states the applicant’s “role in [her stepson’s] life is crucial in promoting his emotional, physical and intellectual development.” [REDACTED] reports that the applicant’s stepson has only seen his biological mother twice since 2002 and he “views [the applicant] as his mother.” [REDACTED] states the applicant’s stepson is at risk for depression if he is separated from the applicant. The AAO acknowledges that the applicant’s stepson may suffer some hardship in being separated from the applicant; however, the AAO notes that the applicant’s stepson is not a qualifying relative, and the applicant has not shown that hardship to her stepson will elevate her husband’s challenges to an extreme level.

Counsel states the applicant’s husband will suffer economic hardship as he is currently unemployed. Counsel claims that “the whole burden of keeping the household financially afloat has been put on the shoulders of the [applicant].” He states the applicant’s household bills include a mortgage, auto loans, and various credit cards, and the applicant cannot support her family on wages in the Philippines.

The AAO acknowledges that the applicant's husband may suffer some emotional problems in being separated from the applicant. The AAO has carefully considered the psychological evaluation regarding the emotional difficulty experienced by the applicant's husband. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Additionally, the submitted psychological evaluation is speculative regarding whether or not the applicant's husband could develop a Intermittent Explosive Disorder. Further, the AAO notes that no documentary evidence was submitted establishing that the applicant's husband has a history of past emotional and psychological problems related with his anger management issues. Regarding financial hardships, the AAO finds the record to include some documentation of the applicant and her husband's income; however, this material offers insufficient proof that the applicant's husband will be unable to support himself in the applicant's absence. Additionally, no documentary evidence has been submitted establishing that the applicant's husband is currently unemployed. Further, the AAO notes that there is no documentary evidence in the record establishing that the applicant would be unable to obtain employment in the Philippines and, thereby, financially assist her husband from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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, supra* at 886. Furthermore, to relocate and suffer extreme hardship, where remaining in 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, supra* at 632-33. 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.

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. *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.