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



U.S. Citizenship  
and Immigration  
Services

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DATE: JAN 09 2012 OFFICE: SAN FRANCISCO, 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act 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 remain in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated July 14, 2009.

On appeal counsel asserts that the applicant's U.S. citizen spouse would suffer extreme hardship of an emotional and financial nature if the waiver is not granted. See *Counsel's Letter in Support of Form I-290B*, Notice of appeal or Motion, received April 13, 2009.

The record contains, but is not limited to: Forms I-601 and I-485 and denials of each; Form I-129F; Form I-131, supporting letter by the applicant's spouse, and denial of Form I-131; hardship affidavit from the applicant's spouse; letters from the applicant's daughter, a family friend, and a drug treatment and rehabilitation center; applicant's affidavits addressing drug use and unlawful U.S. entry; tax returns and earnings statements; bank statement; health insurance card; marriage and birth records; and family photos. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

The record reflects that on May 15, 2007, the applicant entered the United States by presenting the passport and visa of another individual - his brother. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The applicant does not contest these findings on appeal.

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

- (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

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.

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 his child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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.

The record reflects that the applicant’s spouse is [REDACTED] of the Philippines and citizen of the United States. She states that her husband is very polite and considerate to her family, has always been there for her, helps her with household chores when he is not working, and when he is working he helps pay for their daughter’s tuition. See *Hardship Affidavit*, dated January 9, 2009. She states that if her husband is removed, she “could only see him every 5 years because of the economic crises, especially the cost of the airline.” *Id.* The record contains no evidence showing airfare costs to the Philippines or related expenses. The record contains income information only for the applicant’s spouse. See *2005-2007 Individual Tax Returns, Form W-2 Wage and Tax Statements, and Earnings Statements*, various dates. While the applicant’s spouse states that her husband helps with their daughter’s tuition when he is working, the record contains no evidence of the applicant’s income or financial contribution to the household since his May 2007 U.S. entry. The evidence in the record is insufficient to establish that the applicant’s spouse would suffer significant economic hardship in the event of separation.

The applicant’s spouse states that the applicant was her boyfriend when she came to the U.S. in 1988 and that in 1995, she returned to the Philippines and married him. See *Hardship Affidavit*, dated January 9, 2009. She states that after returning to the U.S. she petitioned for her new husband, but that his 1995 medical examination revealed the presence of methamphetamine which the applicant admitted using. See *Letter in Support of Advance Parole*, dated January 30, 2003. The applicant’s spouse states that when her husband was eligible for a medical re-examination in 1998, methamphetamine was again found in his system. *Id.* She states that her husband has no criminal arrests or convictions, entered drug rehabilitation for about a year and thereafter changed his personal life and attitude. *Id.* A Letter From [REDACTED] [REDACTED] of Dawn

*Foundation, Inc.*, dated December 13, 2002, confirms that the applicant was admitted to the [REDACTED] treatment and rehabilitation center on February 15, 2002 and was in the final two months of the program's re-entry phase at the time of writing. The record shows that the applicant was denied an immigrant visa on January 24 1996 and October 15, 2002 and was denied parole on March 13, 2003. As noted above, the record further reflects that on May 15, 2007, the applicant entered the U.S. by presenting his brother's passport and B-2 visa. The applicant's spouse states that she cannot imagine her husband being sent back to the Philippines now that they are finally together and she does not know what she would do without him by her side. *Id.* The applicant's spouse states that her husband is her support and her company and that "it would be an extreme hardship for him to leave because he is the critical piece that holds my family together." *Id.* The AAO acknowledges that the applicant and her spouse have been married for more than fifteen years and that being separated again will result in some degree of hardship. The evidence in the record is insufficient, however, to establish that the applicant's spouse would suffer extreme emotional hardship in the event of separation.

Assertions were made on appeal concerning hardship to the applicant's daughter. Counsel asserts that "the USC child would be emotionally agitated by the physical loss of their father – thus carrying over the USC child's hardship to the USC spouse." See *Counsel's Letter*, dated August 11, 2009. The applicant's spouse states that her daughter needs her father "and does not want her family to break up since we are now finally together." *Id.* The applicant's daughter states: "My mom and I would like for my dad to stay here in America with us. Every year we would like to go to Lake Tahoe with our whole family. I also am very worried that I may lose my father, and send him to the Philippines." See *Applicant's Daughter's Letter*, undated. Congress did not include hardship to the applicant's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act, except as it may affect the qualifying relative – here the applicant's spouse. Though understandably difficult, a child missing her father's presence is a hardship ordinarily associated with the inadmissibility or removability of a family member. The AAO is thus unable to make a determination that the hardships described concerning the applicant's child will cause extreme hardship to the applicant's spouse.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal or inadmissibility of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse does not address the possibility of relocating to the Philippines to be with the applicant. As no assertions of hardship related to relocation have been made, the AAO cannot speculate in this regard. Considered in the aggregate, the AAO finds that the evidence is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to the Philippines to be with the applicant.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i)(1) 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.