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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

**PUBLIC COPY**



#15

DATE:

**JAN 10 2012**

OFFICE: HARLINGEN, TX

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 Acting Field Office Director, Harlingen, Texas, 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained entry to the United States by willfully misrepresenting a material fact. The record indicates that the applicant is married to a United States citizen and 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 reside in the United States.

The Acting Field Office Director found that the applicant had 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. *Decision of the Acting Field Office Director*, dated July 21, 2009.<sup>1</sup>

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant's spouse would not experience extreme hardship if the waiver application is denied. Counsel also contends that USCIS failed to consider favorable factors in the applicant's case. *See Notice of Appeal or Motion (Form I-290) and attachments.*

The record includes, but is not limited to, statements from the applicant and her spouse describing the hardship claim; medical documentation pertaining to the applicant's spouse; and counsel's brief. 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,

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<sup>1</sup> Counsel filed an appeal and indicated that she was appealing both the denial of the Form I-485 and that of the Form I-601. The AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. Accordingly, the AAO will consider the matter only as it pertains to the appeal of the denial of the Form I-601.

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).

The record indicates that on May 21, 1998, the applicant used a photo-substituted Philippine passport to enter the United States. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having gained entry into the United States through fraud or the willful misrepresentation of a material fact.

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

(i) (1) The Attorney General [now the Secretary of Homeland Security] 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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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.

On appeal, counsel asserts that separation will cause the applicant's spouse financial hardship. Counsel contends that the applicant's spouse does not have the financial resources to support himself in the United States and the applicant in the Philippines if the waiver application is denied. She states that he works sporadically as he has health problems, including arthritis, and that the medication he takes makes him dizzy or lightheaded.

Counsel also asserts the applicant's spouse is under the supervision of several medical specialists, takes multiple medications and depends on the applicant to care for him and remind him to take his medications. She states that the applicant's spouse has battled depression and alcoholism; has been treated for esophagitis, gastritis, H. plori infection, colon ployps, and epigastric pain; and has had

surgery for inguinal hernia. She also indicates that he is experiencing mild degenerative changes in his spine.

In an August 19, 2007 affidavit, the applicant's spouse states that he loves the applicant and does not know what he will do without her; that he was married and divorced before and is lucky to have found love in later life; and that the applicant takes good care of him. He indicates that he has had problems with alcohol but with the applicant's love and support he is "in the process of overcoming those demons." The applicant's spouse also states that he has been suffering from major depression and is taking Cymbalta and Trazodone for his condition. He reports that depending on the dose, his mood changes and that he has been instructed to contact his doctor if his depression worsens; if he thinks about harming or killing himself; or if he experiences extreme worry, agitation, panic attacks, difficulty falling asleep or staying asleep, aggressive behavior, irritability, impulsive behavior, severe restlessness, and frenzied or abnormal excitement. The applicant states that his medications make him dizzy or lightheaded; that he feels tired all the time; that he suffers from arthritis; and that he works sporadically because he cannot hold a steady job. He states that he needs the applicant to ensure that he takes his medications.

In a separate August 19, 2009 affidavit, the applicant states that her spouse suffers from chronic major depressive disorder, and depends on her for emotional support and to ensure that he takes his medications. She states that the applicant's medications can have various side effects, including increased levels of depression, suicidal thoughts, agitation, panic attacks, difficulty falling asleep or staying asleep, aggressive behavior, irritability, severe restlessness, and frenzied or abnormal excitement. She reports that she is concerned about her spouse because he suffers from all of these symptoms to some extent.

The record include a November 28, 2007 letter from psychiatrist [REDACTED] in which he states that the applicant's spouse is suffering from Generalized Anxiety Disorder and Major Depressive Disorder, single episode and that he has prescribed Cymbalta and Lunesta. Also contained in the record is a July 10, 2007 psychiatric interview report prepared by [REDACTED] in which he indicates that he has prescribed Cymbalta and Trazodone to treat the applicant's spouse's depression and anxiety. The record further includes medical documentation that establishes that the applicant's spouse has been treated for esophagitis, dyslipidemia, arthritis, and spinal degeneration and that he underwent surgery on May 5, 2009 for a hernia.

It is noted that while counsel, the applicant, and her spouse, state that the applicant's spouse suffers from depression and takes prescribed medications which affects his functioning, including his ability to hold a steady job, the record lacks documentation to establish how the applicant's spouse's daily functioning is affected by his condition and his medications. It is also noted that the medical documentation in the record is from 2007 and there is no evidence that establishes the applicant's spouse's mental health at the time of the appeal, that he continues to be prescribed the same medications or that indicates how any of the medications he is taking affect him. The record also lacks documentation that demonstrates what role, if any, the applicant plays in her spouse's mental health care or what impact separation would have on his mental health.

We find the record to establish that the applicant's spouse has been treated for a number of health problems, but based on the record, we cannot determine whether or to what extent they affect his ability to meet his daily responsibilities, including employment, or that he requires the applicant's assistance to deal with these medical problems.

We find the record does not support counsel's argument regarding financial hardship. The record lacks documentary evidence that establishes the applicant's income or expenses, or proves that she and the applicant currently require financial assistance from their adult children. The record also fails to prove that the applicant's spouse would be required to support the applicant if she lives in the Philippines as she has three adult children in the United States and the record does not establish that they are unable or unwilling to provide her with whatever assistance she might need.

The AAO finds, therefore, when the hardship factors are considered in the aggregate, the applicant has failed to establish that her U.S. citizen spouse would experience extreme hardship as a result of their continued separation.

Regarding relocation, the applicant's spouse asserts that he has two children who live in the United States and no family in the Philippines, that he was born and raised in Texas, that he does not speak Tagalog, and that it would be difficult for him to adjust to life in the Philippines. He also states that relocating to the Philippines would deprive him of the opportunity to spend time with his children and family. The applicant further asserts her spouse would not be able to obtain employment and he would not be able to obtain or afford medical treatment in the Philippines.

While the record does not establish that the applicant's spouse could not obtain adequate health care upon relocation for any mental or physical health condition he may have, the AAO notes that the applicant's spouse is 62 years of age; that he has lived his entire life in the United States; that his family members, other than the applicant, live in the United States; and that he does not speak Tagalog, which will negatively affect his ability to seek employment and acclimate to the Philippine culture and society, as well as complicate any medical treatment he might require in the future. When these specific hardship factors are added to the normal difficulties created by moving to another country, the AAO finds the record to establish that the applicant's spouse would suffer extreme hardship if he relocates to the Philippines to reside with her.

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 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*, 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(s) in this case.

As the applicant has not demonstrated that her qualifying relative would experience extreme hardship whether he remains in the United States or relocates to the Philippines, she has not established eligibility for a waiver under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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.