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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
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Services

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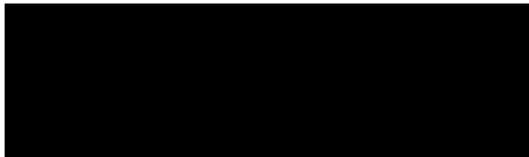
IN RE:

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 . Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion 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 a citizen of the Philippines who misrepresented his intent when entering the United States under a C-1 Transit Visa. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) February 17, 2011.

On appeal, prior counsel for the applicant asserted that the Field Office Director misapplied relevant laws, mischaracterized key facts and abused its discretion when it found that the applicant had misrepresented himself when entering the United States under a C-1 visa. *Form I-290B*, received March 18, 2011.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant frequently travelled to Guantanamo Bay, Cuba, for employment. He obtained a C-1 Visa for transit through the United States to his place of employment in Guantanamo Bay, Cuba. Prior to his last entry his employer informed him not to return to Guantanamo Bay because there was no work for him. The applicant travelled to the United States under his C-1 visa and informed the inspection officer that he was transiting through the United States for his employment. He was admitted to the United States for this purpose but remained in the United States and took up residence.

On the applicant's Form I-290B prior counsel for the applicant asserted that it was erroneous for the Field Office Director to find the applicant inadmissible for misrepresentation, but failed to articulate a basis for this assertion. Subsequent evidentiary submissions do not address this assertion. As such, the AAO finds that the applicant's use of his C-1 visa to enter the United States and take up residence materially misrepresented his intent and he is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: statements from counsel; statements from the applicant and the applicant's spouse; a breakdown of the applicant's spouse's

financial obligations; copies of the residential apartment lease for the applicant and his spouse; copies of a life insurance invoice; copies of phone bills, rent receipts, credit card bills, bank statements and other utilities; medical records pertaining to the applicant's spouse; a statement of psychological health by [REDACTED], dated December 12, 2006; a copy of a restraining order obtained against the applicant's spouse's second husband; copies of the permanent resident cards for three of the applicant's spouse's children from her first marriage; a Form I-864 and 2009 tax return for the applicant's spouse; and copies of the applicant's birth certificate and his spouse's naturalization certificate.¹

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 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-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

¹ Counsel indicated on the Form I-290B that a brief and/or evidence would be submitted to this office within 30 days of filing the appeal. No such brief or evidence appears in the record. Counsel was contacted by this office and a copy of the brief and/or additional evidence was requested. Counsel responded to the request by requesting additional time to submit additional information. However, the regulations do not allow an applicant an indefinite period in which to supplement an appeal once it has been filed. The AAO informed counsel in its request that the request should not be construed as permitting counsel to submit a late brief or request. As it does not appear that counsel had filed a brief and/or additional evidence within 30 days of filing an appeal as indicated on the Form I-290B, the record will be considered complete.

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 prior counsel asserted that the applicant's spouse is a victim of abuse and that separation from the applicant would result in emotional hardship to her. *Statement in Support of Appeal*, received April 18, 2011. Counsel explained that the applicant's spouse entered the United States as the spouse of a U.S. citizen, but was subsequently divorced from her second husband due to physical and verbal abuse, and that she was granted a waiver under the Violence Against Women Act. Counsel stated that she suffered physical violence, rape and emotional abuse and experienced headaches and depression as a result of this abuse. Counsel asserts that the applicant's spouse is afraid to return to the Philippines for reasons relating to her abuse, and that she depends on the applicant to help her overcome her difficult past. Counsel has previously asserted that the applicant's spouse and her four children from a previous marriage would also experience economic hardship if the applicant were not admitted to the United States.

With regard to counsel's assertions that the applicant's spouse is a victim of spousal abuse and was granted a waiver under the Violence Against Women Act, the record contains documents filed in relation to her application to remove conditions on residence, Form I-751, including a psychological health statement from [REDACTED] medical records pertaining to the applicant's spouse's headaches, a divorce decree for the applicant's spouse's first marriage, a copy of the restraining order from her second husband and a detailed statement from the applicant's spouse. The record does not contain any evidence with regard to the emotional impact of separation from her current husband, or which indicates that relocating to the Philippines would impose a psychological impact on the applicant's spouse

The statement of the applicant's spouse details the physical and emotional abuse by her second husband including that her second husband forced her to have sex when she did not want to and that her second husband and his children ignored her and called her names. The statement from [REDACTED] originally submitted with her application to remove conditions on residence, states that the applicant's spouse felt her second husband would hurt her after the expiration of a restraining order, or hurt her when she returned to the Philippines to see her children, and that she presented symptoms of depressed and anxious mood, sleep interruptions, low energy, indecisiveness, poor concentration, low self-esteem and self-confidence, and headaches. *Statement of [REDACTED]* December 12, 2006. Although the AAO acknowledges the difficulties experienced by the applicant's spouse in her second marriage, there is no evidence in the record to show how this is currently impacting the applicant's spouse.

The record does not contain evidence which suggests that the applicant's spouse has any reasonable fear of returning to the Philippines as the evidence indicates her second husband resides in San Francisco and her children appear to have come to the United States in 2010. The AAO does note that, since the applicant's spouse's children have come to the United States, she would be separated from them upon relocation. However, relocation abroad often involves separation from family members and this is not considered an uncommon hardship factor upon relocation. The AAO notes

that the applicant's spouse is a native of the Philippines, is familiar with the language and the culture of the country, and has lived in the United States for less than ten years. Based on the record before it, the AAO cannot determine that the applicant's spouse would experience any uncommon hardship upon relocation.

Nor is there sufficient evidence in the record to establish that the applicant's spouse would suffer extreme hardship if she were to remain in the United States without the applicant. The AAO notes that none of the documentation submitted with regard to the applicant's spouse's prior marital history addresses her current marriage or discusses any emotional impact due to separation from the applicant. The medical records regarding the applicant's spouse's headaches are all for a brief period from May to July 2006, and are not sufficiently probative to establish that she still suffers from this condition or that it was related to any marital strain or immigration issues. There is no objective evidence in the record which supports counsel's assertion that the applicant's spouse is dependent on the applicant emotionally or would experience extreme emotional hardship and increased headaches and depression due to separation from him.

The record does not contain any recent evidence that the applicant's spouse's second husband has threatened her, that she has any medical condition related to the breakup of her second marriage, or that she is emotionally or psychologically dependent on the applicant, her current husband, for support. Based on the evidence in the record the AAO can accord some weight to the hardship factor of emotional and psychological hardship the applicant's spouse would experience due to her marital history, but it cannot find the evidence in the record to support that this basis alone constitutes extreme hardship.

With regard to the economic hardship discussed in the initial filing, the record contains substantial evidence of the financial obligations of the applicant's spouse. There are copies of utility bills, residential apartment lease receipts and other bills, as well as a breakdown of the applicant's spouse's financial obligations. What the record does not contain, however, is evidence of the applicant's income, whether or not the applicant's spouse is capable of meeting her financial obligations and how the applicant's presence would result in any change in economic condition of his spouse.

When examined in the aggregate, the AAO can determine that the applicant's spouse may experience some hardship upon separation due to her marital history, but without additional evidence which establishes the emotional or psychological impact of separation from her current spouse, or evidence which indicates that she will experience uncommon financial hardship, these impacts do not rise to a level of extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are

insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.