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U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
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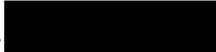


**U.S. Citizenship  
and Immigration  
Services**



H5

DATE: **JAN 11 2012** OFFICE: MANILA, PHILIPPINES

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) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Field Office Director, Manila, Philippines, denied the waiver request and the consent to reapply for admission into the United States after removal, and are 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 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 having procured a visa for admission to the United States through fraud or misrepresentation. The applicant also was found to be inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for having been ordered removed under section 235(b)(1) upon arrival into the United States, and for seeking admission into the United States within 5 years of such removal. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant contests these findings of inadmissibility and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), as well as permission to reapply for admission into the United States after removal in order to reside in the United States with her husband.

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 Field Office Director, Manila, Philippines*, dated April 20, 2010. The Field Office Director also concluded that granting the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) would serve no purpose since the applicant's waiver request was denied, and denied Form I-212 accordingly. *Id.*

On appeal, the applicant's spouse asserts that the documentation evidences that he will suffer extreme hardship because of the applicant's inadmissibility. *See Form I-290B, Notice of Appeal or Motion*, dated May 14, 2010.

The record includes, but is not limited to: letters of support from the applicant and her spouse; identity documents; email correspondence; financial documents; employment documents; military service documents; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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 Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter*

of *G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The “representations must be believed and acted upon by the party deceived to the advantage of the deceiver.” *Id.*

A misrepresentation is generally material only if the alien received a benefit for which she would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962, AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960, AG 1961). A misrepresentation made in connection with an application for admission to the United States is material either if the alien is excludable on the true facts or if the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in proper determination that she be excluded. See *Matter of S- and B-C-*, *supra*, at 448-449.

The record establishes that the applicant obtained a nonimmigrant B-1/B-2 Visa on April 11, 2008, valid until April 9, 2018. On October 28, 2008, the applicant presented the B-1/B-2 Visa to U.S. immigration officials in St. Paul, Minnesota, seeking admission into the United States by indicating that she was going to visit and travel with her sister in Orlando, Florida for five – six months. The record further establishes that at the time of seeking admission into the United States, the applicant had a boyfriend in the United States, [REDACTED] and that the applicant intended to stay with [REDACTED] and not with her sister: “Also, once [I’m] there, I would tell the immigration officer that my purpose is to visit my sister and her family[,] and I will write her address. Telling the real purpose is not good coz [sic] [I’m] not holding a fiancée visa ... [I] cannot say that my purpose is to stay with you coz [sic] if [I] say that, they wouldn[‘]t allow me coz [sic] they will know that [I] will be over-staying [sic].” *Email Correspondences*, dated August 3, 2008 at 4:04 am and 4:36 pm. The record also establishes that the applicant intended to seek employment while she was in the United States: “[I’ve] been trying to find a job, most importantly, a postdocoral [sic] position or a faculty in the university. [U]nfortunately, [I] couldn’t find one in my field. [A]nyway, [I] will still keep on searching ... [I’m] likewise looking forward to start[ing] our new life.” *Email Correspondence*, dated October 19, 2008 at 7:45 pm.

The AAO finds that the applicant made misrepresentations regarding the purpose of her visit to the United States. The AAO further finds that these misrepresentations shut off a line of inquiry which was relevant to the applicant’s eligibility for admission into the United States as a B-1/B-2 nonimmigrant and may well have resulted in a proper determination that she be excluded. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States through fraud or misrepresentation.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien’s arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20

years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

...

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

As discussed previously, on October 28, 2008, the applicant presented a nonimmigrant visa to U.S. immigration officials, seeking admission into the United States as a B-1/B-2 Visitor. The applicant was found inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i) of the Act and expeditiously removed from the United States under section 235(b)(1) of the Act and returned to the Philippines.

The record further reflects that the applicant attended an interview with the U.S. Consular Officer in Manila, Philippines, seeking an immigrant visa to enter the United States as the beneficiary of an approved Form I-130. *See* Petition for Alien Relative (Form I-130), approved March 12, 2009. And, on April 16, 2010, the applicant filed Form I-212, seeking permission to reapply for admission into the United States after removal. The applicant is therefore inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. §1182(a)(9)(A)(i).

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

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 applicant's spouse contends that he will suffer extreme emotional and financial hardship upon separation from the applicant because he would like to start a family with the applicant, but he and the applicant are in their 40s and pushing the physical limits of being able to have a child together; he is angry, frustrated, and depressed because of the current situation and his experiences with the U.S. immigration process; and it would cost approximately \$27,000 per year to visit the applicant in the Philippines three times each year because of travel and accommodation costs as well as loss of income. *See Letter of Support from [REDACTED] notarized May 12, 2010.* In support of the financial hardship that he will endure, the spouse submitted evidence of his income as well as round-trip airline itineraries between Orlando, Florida and Manila, Philippines for about \$1860. *See Federal Income Tax Summar[ies] and related documents; Delta Airlines itinerary.*

The AAO notes that the applicant's spouse may experience some emotional hardship because of separation from the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence of the spouse's current mental health or the effect that separation from the applicant has had on the spouse's overall wellbeing. The AAO recognizes the desires of the spouse and the applicant to have children together; however, the difficulties described do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member.

The AAO also notes that the applicant's spouse may experience some financial hardship because of separation from the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence of the spouse's financial obligations or his inability to support himself in the applicant's absence. Moreover, the record does not include any evidence concerning the spouse's loss of income if he were to travel to the Philippines to visit the applicant. Also, the record contains evidence of the applicant's employment in the College of Dentistry at the University of the East in Manila in the capacity of a regular, fulltime Professor since November 8, 1995. [REDACTED]

*in Manila*, dated November 16, 2009. However, the record does not include any evidence of the applicant's inability to financially contribute to hers and her spouse's households.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Additionally, the applicant's spouse contends that he will suffer extreme emotional and financial hardship upon relocating to the Philippines to be with the applicant because he assists his brother and sister-in-law with the physical and financial care of his 80-year old mother who suffers from dementia; he would have to shut-down his business as an engineering contractor; he is unemployable in the Philippines because he is a foreigner and over the age of 35 years; he and his wife would be a financial and physical burden on her family because his wife's income alone is not adequate to support them; his home would go into foreclosure, which would ruin his credit and future opportunities to buy a home in the United States because he owes \$160,000 and comparable homes have sold for \$71,500 and \$109,000; and he would have to sell his rental property at a loss or hire a management company. *See Notarized Letter of Support from [REDACTED] supra; see also Undated Letter of Support from [REDACTED] supra.* In support of the financial hardship that he will endure, the spouse submitted evidence of real estate property tax information for his personal residence, indicating a market value decrease between 2008 and 2009; respectively, \$142,000 and \$113,470. *See Property Research Results from [REDACTED] C.F.A., Property Appraiser in Brevard County, Florida.* The spouse also submitted an article, indicating that Manila is among the world's cheapest cities, but also one that pays the lowest hourly wages with an average worker being paid \$1.60/hour gross. *See [REDACTED] "Manila's living costs, wages among the lowest", August 30, 2009.* And, the spouse submitted job advertisements, indicating that employers in the Philippines were searching for engineers, preferably males between 22 – 33 years of age, or no specific gender and not more than 35 years of age, and a minimum of three years of experience overseas. *See Job Announcements at [www.jobsdb.com](http://www.jobsdb.com).*

Although the spouse was born in the United States and has immediate family members in the United States and may experience some hardship upon separating from them, the evidence in the record does not indicate that the hardship that the spouse may experience goes beyond what is commonly experienced by qualified relatives of inadmissible family members. The record does not contain any evidence of the spouse's mother's physical or mental health. The record only contains a general statement from the spouse that his mother suffers from dementia and that she lives with his brother and sister-in-law, and that he assists them with her care by taking her to and from her daycare, shopping, and church. *See Undated Letter of Support from [REDACTED] supra.* Absent an explanation in plain language from the treating physician of the exact nature and severity of any 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. Additionally, there is no evidence in the record to show that the spouse would be unable to travel back and forth from the Philippines to the United States.

The AAO also finds that the record is insufficient to establish that the applicant's spouse would suffer significant financial hardship if he were to relocate to the Philippines to be with the applicant. As discussed previously, the record does not contain any evidence of the spouse's financial obligations, including his personal residential and rental property mortgages. And, the record does not contain any evidence of the spouse's income as a fulltime faculty member in the College of Dentistry at the University of the East in Manila. Moreover, the record does not contain sufficient evidence to support the general statement that the spouse is unemployable in the Philippines because he is a foreigner and over the age of 35 years. The AAO notes that some of

the job advertisements submitted by the spouse indicate a preference for gender, age, and overseas experience for potential employees. However, the record does not contain any evidence that the current economic and social conditions in the Philippines mandate any such restrictions.

Although the spouse may experience some hardships as a result of relocation to the Philippines with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant or relocating to the Philippines to be with the applicant because of the applicant's inadmissibility. However, in this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse as required under section 212(a)(6)(C)(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

The AAO notes that the Field Office Director denied the applicant's Form I-212 in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, no purpose would be served in granting the applicant's Form I-212.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.