

identify information related to
prevent clearly unwarranted
invasion of personal privacy

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**



PUBLIC COPY



H5

DATE: **JAN 17 2012** OFFICE: CHICAGO, ILLINOIS

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, Chicago, Illinois 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 with his U.S. citizen spouse and children.

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 August 29, 2009.

On appeal, counsel asserts extreme hardship of a familial, emotional, physical and economic nature to the applicant's spouse if the waiver is not granted. See *I-290B, Notice of Appeal or Motion*, received September 29, 2009.

The record includes, but is not limited to: Form I-290B and counsel's brief; Forms I-601, I-485, and denials of each; applicant's affidavit; applicant's spouse's hardship affidavit; medical records; employment letters, pay stubs, tax returns; wage and earning statements; deed and mortgage statement; billing statements; health insurance cards and plan; marriage and birth records; character reference letters; internet print-outs concerning the Philippines; and Form I-130. 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, 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 or about March 2, 2001, the applicant entered the United States by presenting an altered passport in another individual's name to immigration authorities. 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.¹

¹ The Field Office Director determined that the applicant also entered the United States on or about November 2, 2000 by presenting the same altered passport he used to enter on March 2, 2001 and that the applicant subsequently failed to disclose said entry during his April 14, 2009 adjustment of status interview. The applicant asserts on

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 children 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 relatives. 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

appeal that when he inquired about the November 2, 2000 U.S. entry stamp in the passport he obtained, he was told that it had already "been used by someone else in gaining entry to the U.S." and was subsequently returned for the applicant's use. *See Applicant's Affidavit*, dated October 23, 2009. The applicant states that his only U.S. entry was in March 2001 and that "USCIS's allegation" that he entered the U.S., returned to the Philippines, and then entered again on the altered passport "does not make sense." *Id.* Counsel asserts: "it appears that USCIS investigated the visa number connected to the assumed name passport," thus making "a grave factual error." *See Counsel's Brief*, dated October 24, 2009. No documentary evidence has been submitted on appeal to dispute the field office determination. The AAO finds, however, that if the Field Office Director did indeed err the error is harmless given that the applicant is inadmissible under § 212(a)(6)(C)(i) whether he entered the United States by using an altered passport on one occasion or on two.

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 a 37-year-old native of the Philippines and citizen of the United States. She states that she and the applicant have never been away from

each other since they married on July 12, 2003. See *Hardship Affidavit*, dated March 13, 2008. The applicant's spouse states that she and her husband depend on each other in every way, that he is the only person she can trust with anything, and that she needs him with her. *Id.* She states that her children would be devastated if they wake up one day to find their father gone. *Id.* The applicant's spouse states that separation itself will cause her extreme emotional hardship, that her friends have noticed a lot of changes in her since her husband's "problems cropped up," that she has become anxious, irritable, depressed, did not want to socialize much, is afraid that she might break down, and she would be emotionally depressed and unable to function normally at home and at work in the event of separation. *Id.* No supporting documentary evidence has been submitted which shows that the applicant's spouse would suffer emotional hardship beyond that ordinarily associated with the removal or inadmissibility of a close family member.

The applicant's spouse states that while she pays the major expenses, her husband takes care of the lesser ones and she relies on his income to help her pay these. See *Hardship Affidavit*, dated March 13, 2008. She states that she and the applicant share the household chores and try to fix their schedules so that one is always available to attend to the children. *Id.* The applicant's spouse states: "[REDACTED] is taken away from us, I do not know how I can do the Herculean task of working fulltime and mother to two toddlers and taking charge of all our expenses. *Id.* Evidence in the record shows that the applicant's spouse is a registered nurse currently employed both full time by Swedish Covenant Hospital at a rate of \$36.00 per hour, and part time by Resurrection Health Care at a rate of \$40.00 per hour. See *Swedish Covenant Hospital Employment Letter*, dated February 11, 2008 and *Resurrection Health Care Employment Letter*, dated February 11, 2008. The applicant's spouse's 2007 *Federal Tax Return*, dated March 10, 2008, shows that she filed separately from the applicant as "head of household" and earned \$85,479.00. The record contains no documentary evidence of the applicant's income for the 2007 tax year, and 2008 tax returns have not been submitted for either the applicant or his spouse on appeal. The AAO cannot, therefore, determine the applicant's economic contribution to the household. While the AAO recognizes that the applicant's spouse would face some reduction of overall income in the event of the applicant's removal, the evidence in the record is insufficient to establish that the applicant's spouse would be unable to support herself and her children alone.

The applicant's spouse states that she has a medical condition which prevents her "from lifting anything heavy, making sudden and unexpected movements and bending." See *Hardship Affidavit*, dated March 13, 2008. She states that she needs the applicant's help doing simple tasks for the children, like bathing them, lifting them in and out of the bathtub and car seat, and carrying them to bed if they fall asleep on the couch, and that she "might break her back" if she carries either child. *Id.* The applicant's spouse states that her condition requires her "to have periodic check-ups and take Lidone, as prescribed by my doctor, for back pains." The record contains a single medical document related to the applicant's spouse. The *MRI Radiology Report*, dated May 8, 2007, notes an indication of "low back pain" and discusses a "suggestion of minimal reverse" factors, "mild diffusely bulging discs...", and "mild degenerative facet changes..." The record contains no documentary evidence addressing any limitations to the applicant's spouse related to the MRI findings or any underlying medical condition and no

documentary evidence addressing periodic treatment or prescription medications. The record shows that the applicant's spouse is employed full time at one hospital and part time at another medical facility, working as a registered nurse in both. Counsel asserts that: "Because of Mayflor's back condition, there is no guarantee that she will be able to work the same as she has in the past." See *Counsel's Brief*, dated October 24, 2009. In proceedings for waiver of inadmissibility, the evidentiary burden rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. While the AAO recognizes that the applicant's spouse may face difficulties related to physically caring for her children, there is insufficient evidence to establish that she would suffer significant medical hardship in the event of separation.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that her immediate family, work, religious, community and social ties are in the U.S. and she cannot sever those ties and move abroad to be with her husband. See *Hardship Affidavit*, dated March 13, 2008. She states that she has "minimum" economic, social, community, and religious ties in the Philippines. *Id.* The applicant's spouse states that if she was to relocate, she would need to apply for an immigration permit and work permit. The AAO notes that the applicant's spouse is a native of the Philippines and it has not been established that she would need an immigration permit or work permit were she to return to her country of origin. The applicant's spouse states that she does not know if she "could find suitable employment given the high unemployment rate and economic conditions" in the Philippines and she would not be earning as much as in the U.S. *Id.* The record contains a poor copy quality document called "Philippine Economic Outlook," dated November 2004 and an undated internet print-out from "txtmania.com" called "Social Issues in the Philippines." The most recent date referred to in the latter is 2002. *Id.* Given the outdated information provided and the unknown reliability of the latter, the AAO can accord only minimal weight to this evidence. The applicant's spouse states that she has a career, financial obligations, responsibilities, assets and properties in the United States. See *Hardship Affidavit*, dated March 13, 2008. She states that she currently enjoys employee-related benefits, medical and health insurance, paid leaves, and retirement benefits as well as a good credit standing. *Id.* The applicant's spouse states: "I will lose my home and cars (because I cannot pay the mortgage)." *Id.* The applicant's spouse does not address the possibility of selling or leasing these assets should she choose to relocate. While the AAO acknowledges that the applicant's spouse would lose her current employment if she were to relocate to the Philippines, the evidence does not establish that she would be unable to find employment in the Philippines or that she would be unable to meet her financial obligations.

The applicant's spouse states that she will lose her health insurance which is essential to her well-being and that of her children. See *Hardship Affidavit*, dated March 13, 2008. She states that her "medical needs may not be satisfied by the Philippines' medical facilities and hospitals,"

and her “health will deteriorate and my physical problems will be aggravated due to lack of proper medical care and medication.” *Id.* In support of these assertions, the applicant submits *Consular Information Sheets*, dated April 27, 2007 and January 17, 2008, which caution U.S. citizens traveling to the Philippines that: “Adequate medical care is available in major cities, but even the best hospitals may not meet the standards of medical care, sanitation and facilities provided by hospitals in the United States. Medical care is limited in rural and more remote areas.” *Id.* While the AAO recognizes that health care providers and facilities in the Philippines may not meet the same standards as those in the U.S., the evidence is insufficient to establish that she requires extensive medical attention unavailable to her should she choose to relocate.

The applicant’s spouse states that she is frightened due to groups in the Philippines unfriendly to US. citizens, and refers to the *Consular Information Sheet*, dated January 17, 2008. While the document indicates that travelers may face the threat of terrorist activities anywhere in the Philippines, it warns that “the southern Island of Mindanao and the [REDACTED] are of particular concern.” *Id.* While the applicant’s spouse has not asserted the area to which she would likely relocate with her husband, the AAO has considered the existence of terrorist groups in the Philippines among the aggregate hardship factors.

Assertions have been made concerning hardship to the applicant’s children. Congress did not include hardship to the applicant’s children as factors 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. The applicant’s spouse states that her children (born December 2004 and 2006) require pediatric checkups and immunity shots which may not be available to them in the Philippines. See *Hardship Affidavit*, dated March 13, 2008. She states that both children have sensitive skin, suffer from eczema, and need medicine to protect their skin. *Id.* The record contains no documentary evidence related to either child’s skin condition or medication. The applicant’s spouse states that her daughter, [REDACTED], was diagnosed with a heart murmur and needs to be “monitored and periodically checked up by a cardiologist.” *Id.* A *Final Report* from the University of Illinois Medical Center Pediatric Cardiology Clinic, dated November 21, 2007 confirms a vibratory systolic murmur, shows there are no other murmurs, and notes the parents were informed the “child has no heart condition.” *Id.* “Recommendations” include Medications: None; Tests Recommended: None; Activity: No Restrictions; and Follow-Up: routine well child visit with primary pediatrician. *Id.* The evidence is insufficient to establish that the applicant’s daughter will require significant medical care unavailable to her in the Philippines. The applicant’s spouse states that her children “might not receive comparable quality of education they are receiving right now in their home country,” may later need to have their courses validated or take validation exams in the U.S., and may not even be proficient in speaking English. See *Hardship Affidavit*, dated March 13, 2008. The evidence is insufficient to establish that the applicant’s young children will be unable to speak both Filipino and English or succeed in their education and future careers. While the AAO recognizes that there may be difficulties for the applicant’s children as a result of relocation, the applicant has failed to establish that such difficulties would be uncommon or extreme such that they will cause extreme hardship to the applicant’s spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country she has not resided in for approximately ten years; separation from family, friends, and community in the United States; loss of current employment and employment-related benefits; U.S. property ownership; health, medical, and safety concerns; and concerns about the education of her children. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to the Philippines to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.