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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

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Date: **JAN 23 2012**

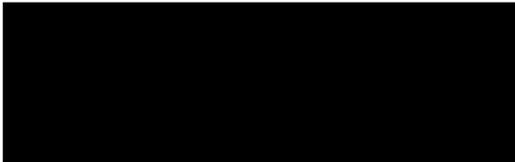
Office: SANTA ANA, CA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

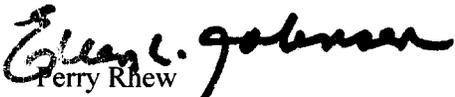


INSTRUCTIONS:

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, Santa Ana, California. The matter 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 willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated September 18, 2009.

On appeal, counsel contends the applicant established the requisite hardship, particularly considering the applicant's husband was born in the United States, has lived in the United States for fifty-eight years, and works as a government employee for the U.S. Postal Service, a position where there is no comparable field or opportunity in the Philippines.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on September 26, 2007; affidavits from the applicant; a letter from the applicant's physician; an affidavit from [REDACTED] letters of support; a letter from [REDACTED] employer; copies of tax returns and other financial documents; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that on her application for a visitor's visa, she indicated she was married to a Filipino man when she was not, in fact, married. *Statement of* [REDACTED] dated February 26, 2009 (stating that she indicated a date of marriage on her children's birth certificates because she "was unwed and never married . . . [and] simply stated a marriage date to deflect any embarrassment and humiliation"); *Certification, Office of the Municipal Civil Registrar, Republic of the Philippines*, undated (stating there appears to be no record of [REDACTED] marriage in the municipality); *see also Letter from* [REDACTED] dated December 17, 2008 (stating the applicant has never been married prior to her current marriage to [REDACTED] and that "[s]he held herself out to be married, only for cultural reasons"). Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant’s husband, [REDACTED] states that he was born in the United States and is dependent on his wife for his emotional and family needs. According to [REDACTED] his wife is the foundation of his family and the thought of being separated from his wife makes him tremble with fear, anxiety, and uncertainty. He states he has three brothers and one sister and that they are all very close. In addition, [REDACTED] contends that his wife is undergoing treatment for a tumor in her right lung and that although it is benign, she needs frequent monitoring. Moreover, [REDACTED] states that he has worked for the U.S. Postal Service since 2002 and that he and his wife are in the process of purchasing a home. He states that without his wife, who is a caregiver to two elderly individuals with numerous health problems, he would face losing his home. Furthermore, [REDACTED] contends that if his wife returned to the Philippines, she would be deprived of the unlimited opportunities offered in the United States. *Affidavit of [REDACTED]* dated August 6, 2009.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] will suffer extreme hardship if his wife’s waiver application were denied. Significantly, aside from stating that [REDACTED] would not have the same opportunities in the Philippines, particularly with respect to employment, neither the applicant nor her husband discuss the possibility of [REDACTED] relocating to the Philippines to avoid the hardship of separation and they do not address whether such a move would represent a hardship to him. In any event, there is no evidence in the record suggesting that [REDACTED] would be unable to find employment in the Philippines. Although the AAO is sympathetic to the couple’s circumstances, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the applicant’s tumor in her lung, there is insufficient evidence in the record to show extreme hardship to [REDACTED] the only qualifying relative in this case. Although the record contains a letter from the applicant’s physician corroborating the contention that

the applicant has a benign tumor in her lung that requires frequent monitoring, *Letter from* [REDACTED] [REDACTED] dated August 4, 2009, there is no suggestion in the record that the applicant's condition cannot be adequately monitored in the Philippines. To the extent [REDACTED] contends he would lose his home if the applicant departed the United States, the record does not contain sufficient financial documentation to show extreme financial hardship. For instance, there is no evidence addressing the applicant's wages and there is no evidence addressing the couple's regular, monthly expenses. Without more detailed information, there is insufficient evidence in the record to determine the extent of [REDACTED] [REDACTED] financial hardship. Moreover, to the extent [REDACTED] contends he would suffer emotional harm if his wife departed the United States, the record does not show that [REDACTED] hardship is extreme or that separation from his wife is unique or atypical compared to other individuals separated as a result of inadmissibility of exclusion. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Considering all of these factors cumulatively, the AAO finds that there is insufficient evidence to show that the hardship [REDACTED] would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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.